CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 32 **APRIL 15, 1998** **NO. 15**

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 98–26)

TARIFF-RATE QUOTA FOR CALENDAR YEAR 1998, ON TUNA CLASSIFIABLE UNDER SUBHEADING 1604.14.20, HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTSUS)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna for Calendar Year 1998.

SUMMARY: Each year the tariff-rate quota for tuna fish described in subheading 1604.14.20, HTSUS, is based on the United States canned tuna production for the preceding calendar year. This document sets forth the quota for calendar year 1998.

EFFECTIVE DATES: The 1998 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Cynthia Porter, Chief, Quota, Import Operations, Trade Compliance Division, Office of Field Operations, U.S. Customs Service, Washington, DC 20229, (202) 927–5399.

SUPPLEMENTARY INFORMATION:

BACKGROUND

It has now been determined that 30,535,027 kilograms of tuna may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 1998, at the rate of 6 percent ad valorem under subheading 1604.14.20, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under subheading 1604.14.30 HTSUS.

Dated: April 2, 1998.

CONNIE J. FENCHEL,
Acting Commissioner of Customs.

[Published in the Federal Register, April 7, 1998 (63 FR 17045)]

(T.D. 98–27)

SYNOPSES OF DRAWBACK DECISIONS

The following are synopses of drawback contracts approved February 21, 1995, to January 8, 1998, inclusive, pursuant to Subpart C, Part 191, Customs Regulations; and approvals under Treasury Decision 84–49.

In the synopses below are listed for each drawback contract approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the proposal was signed, the basis of determining payment, the Port Director to whom the contract was forwarded or approved by, and the date on which it was approved.

Date: March 31, 1998.

WILLIAM G. ROSOFF,
(for John Durant, Director,
Commercial Rulings Division.)

(A) Company: Aladdin Manufacturing Corp. (successor to Horizon Industries, Inc.'s T.D. 91–67–H and unpublished authorization of April 25, 1986; and successor to Galaxy Carpet Mills, Inc.'s T.D. 89–23–N and unpublished authorization of August 22, 1988 under 19 USC 1313(s))

Articles: Textured yarn a/k/a manufactured carpet yarn; space dyed yarn; spun yarn; air-entangled yarn; tufted carpet; tufted rugs; woven rugs

Merchandise: Nylon yarn a/k/a nylon filament yarn a/k/a bulk continuous filament; polypropylene yarn a/k/a olefin yarn a/k/a polypropylene filament yarn; polyester yarn a/k/a polyester filament yarn; nylon staple fiber; polyester staple fiber

Factories: Belton, Bennettsville, Calhoun Falls, Landrum, Dillon, Liberty, SC; Greenville, Laurel Hill, Eden, NC; Philadelphia, PA; Lyerly, Dublin, Dalton, Chatsworth, Summerville, Macon, Forsyth, Ft. Oglethorpe, Calhoun, Sugar Valley & Cartersville, GA; South Pittsburg, TN

Proposal signed: July 31, 1997

Basis of claim: Appearing in

Contract forwarded to PDs of Customs: Chicago, New York & Miami, November 28, 1997

(B) Company: Beaulieu Group, LLC (successor to Conquest Carpet Mills, Inc.'s T.D. 87–102–H and T.D. 87–102–I and successor to Beaulieu of America, Inc.'s T.D. 88–76–H under 19 USC 1313(s))
Articles: Textured yarn a/k/a manufactured carpet yarn; space dyed yarn; spun yarn; air-entangled yarn; tufted carpet; tufted rugs; woven rugs
Merchandise: Nylon yarn a/k/a nylon filament yarn a/k/a bulk continuous filament; polyester yarn a/k/a polyester filament yarn; polypropylene yarn a/k/a olefin yarn a/k/a polypropylene filament yarn; nylon staple fiber; polyester staple fiber
Factories: Dalton (5), Chatsworth (4), Calhoun (2), Rome, Gainesville, Eton, GA; Bridgeport (2), AL; Anaheim, CA; Aiken, SC
Proposal signed: October 27, 1997
Basis of claim: Appearing in
Contract forwarded to PDs of Customs: Chicago, New York & Miami, December 10, 1997

(C) Company: The Dow Chemical Co.
Articles: Co-polycarbonate ACP
Merchandise: 9,9'-Bis(4-hydroxyphenyl) fluorene (a/k/a BHPF monomer)
Factory: Freeport, TX
Proposal signed: September 18, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: Houston, December 10, 1997

(D) Company: E. I. DuPont de Nemours & Co.
Articles: Lithium metal; lithium metal (off grade)
Merchandise: Lithium chloride (technical grade)
Factory: Niagara Falls, NY
Proposal signed: October 20, 1997
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Contract forwarded to PDs of Customs: Boston & New York, January 8, 1998

(E) Company: Fitel Lucent Technologies
Articles: Fiber optic cable
Merchandise: High modulus aramid yarn
Factory: Carrollton, GA
Proposal signed: May 28, 1997
Basis of claim: Used in, less valuable waste
Contract forwarded to PD of Customs: New York, November 21, 1997

(F) Company: The Goodyear Tire & Rubber Co.
Articles: Tires
Merchandise: Isoprene; hydroquinone; para-cresol
Factories: Gadsden, Decatur & Scottsboro, AL; Calhoun & Cartersville, GA; Freeport, IL; Topeka, KS; Cumberland, MD; Fayetteville, NC;' Niagara Falls, NY; Akron, OH; Lawton, OK; Union City, TN; Beaumont, Bayport, Houston & Tyler, TX; Danville, VA; Pt. Pleasant, WV
Proposal signed: August 19, 1996
Basis of claim: Used in
Contract issued by PD of Customs: New York, November 17, 1997
Revokes: T.D. 89–61–Q to cover change in factory locations

(G) Company: The Goodyear Tire & Rubber Co.
Articles: Tires
Merchandise: Adamax-O
Factories: Gadsden, Decatur & Scottsboro, AL; Calhoun & Cartersville, GA; Freeport, IL; Topeka, KS; Cumberland, MD; Fayetteville, NC; Niagara Falls, NY; Akron, OH; Lawton, OK; Union City, TN; Beaumont, Bayport, Houston & Tyler, TX; Danville, VA
Proposal signed: August 19, 1996
Basis of claim: Used in
Contract issued by PD of Customs: New York, November 18, 1997
Revokes: T.D. 93–10–H to cover change in factory locations

(H) Company: The Goodyear Tire & Rubber Co.
Articles: Tires
Merchandise: SPONBAX; NOBAX; PHENAX; PONTAX; OLIVAX; TUAX; VULTAX; CODE–72 (PIG 72)
Factories: Gadsden, Decatur & Scottsboro, AL; Calhoun & Cartersville, GA; Freeport, IL; Topeka, KS; Cumberland, MD; Fayetteville, NC; Niagara Falls, NY; Akron, OH; Lawton, OK; Union City, TN; Beaumont, Bayport, Houston & Tyler, TX; Danville, VA
Proposal signed: August 19, 1996
Basis of claim: Used in
Contract issued by PD of Customs: New York, November 18, 1997
Revokes: T.D. 89–89–M to cover change in factory locations

(I) Company: The Goodyear Tire & Rubber Co.
Articles: Tires
Merchandise: Code 567 a/k/a X50S
Factories: Gadsden, Decatur & Scottsboro, AL; Calhoun & Cartersville, GA; Freeport, IL; Topeka, KS; Cumberland, MD; Fayetteville, NC; Akron, OH; Lawton, OK; Union City, TN; Tyler, TX; Danville, VA
Proposal signed: August 19, 1996
Basis of claim: Used in
Contract issued by PD of Customs: New York, November 26, 1997
Revokes: T.D. 90–2–O to cover change in factory locations

(J) Company: The Goodyear Tire & Rubber Co.
Articles: Tires
Merchandise: Hawkax (N-cyclohexyl-2-benzothiazolesulfenamide)
Factories: Gadsden, Decatur & Scottsboro, AL; Calhoun & Cartersville, GA; Freeport, IL; Topeka, KS; Cumberland, MD; Fayetteville, NC; Niagara Falls, NY; Akron, OH; Lawton, OK; Union City, TN; Beaumont, Bayport, Houston & Tyler, TX; Danville, VA; Pt. Pleasant, WV
Proposal signed: August 19, 1996
Basis of claim: Used in
Contract issued by PD of Customs: New York, December 31, 1997
Revokes: T.D. 94–21–O to cover change in factory locations

(K) Company: The Goodyear Tire & Rubber Co.
Articles: Tires; hose; V-belts; tank treads; air springs
Merchandise: N-Cyclohexylthiophthalimide (LEIBAX); N,N'-Diisopropylbenzo-thiazole-2-sulfenamide (DIBSAX)
Factories: Gadsden, AL; Kingsman, AZ; Atlanta, GA; Mt. Pleasant, IA; Freeport, IL; Topeka, KS; Cumberland & Hannibal, MD; Fayetteville, NC; Lincoln & Norfolk, NE; Akron, Greensburg, Jackson & St. Marys, OH; Lawton, OK; Union City, TN; Tyler, TX; Danville, VA; Sun Prairie, WI
Proposal signed: August 19, 1996
Basis of claim: Used in
Contract issued by PD of Customs: New York, January 8, 1998
Revokes: T.D. 95–66–N to cover change in factory locations

(L) Company: Harvest States Cooperatives
Articles: Cleaned, blended and graded wheat; blended and graded wheat
Merchandise: Various classes and grades of wheat
Factories: Huron, OH; Superior, WI; Belle Chasse, LA; Rush City, MN
Proposal signed: September 22, 1997
Basis of claim: Appearing in
Contract forwarded to PDs of Customs: Chicago & New York, December 10, 1997

(M) Company: Hoechst Celanese Chemical Group, Ltd.
Articles: Inhibited butyl acrylates
Merchandise: N-butyl alcohol; industrial and unrefined grade acrylic acid
Factories: Pasadena & Pampa, TX
Proposal signed: October 28, 1997
Basis of claim: Used in
Contract issued by PD of Custom: Houston, November 13, 1997
Revokes: T.D. 97–54–M to cover additional factory location

(N) Company: ISP Chemicals, Inc.
Articles: Butyrolactone
Merchandise: 1,4-butanediol (B1D)
Factory: Calvert City, KY
Proposal signed: July 28, 1997
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, December 12, 1997
Revokes: T.D. 92–59–L

(O) Company: ISP Technologies, Inc.
Articles: Octyl pyrolidone (LP–100, Agsolex #8)
Merchandise: n-Octilamine
Factory: Texas City, TX
Proposal signed: November 21, 1997
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, December 12, 1997

(P) Company: Johnson Matthey, Inc.
Articles: Iridium trichloride crystal; iridium trichloride in solution; chloroIridic acid crystal; chloroIridic acid solution
Merchandise: Ammonium chloroIridate
Factory: West Deptford, NJ
Proposal signed: July 17, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: Boston, December 10, 1997

(Q) Company: Milliken and Company
Articles: Textured yarn a/k/a manufactured carpet yarn; space dyed yarn; spun yarn; air-entangled yarn; tufted carpet; tufted rugs; woven rugs; carpet tiles; walk-off mats a/k/a rubber backed mats
Merchandise: Nylon yarn a/k/a nylon filament yarn a/k/a bulk continuous filament; polyester yarn a/k/a polyester filament yarn; polypropylene yarn a/k/a olefin yarn a/k/a polypropylene filament yarn; nylon staple fiber; polyester staple fiber
Factories: Nicholls, LaGrange (4), Pine Mountain, GA; Stearns, KY; Winfield, TN; Clemson & Laurens, SC
Proposal signed: August 21, 1997
Basis of claim: Appearing in
Contract forwarded to PDs of Customs: Chicago, New York, Miami, November 28, 1997

(R) Company: Norman M. Morris Corp.
Articles: Crocodile skin watch straps
Merchandise: Crocodile skins
Factory: Largo, FL
Proposal signed: August 25, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New York, October 7, 1997

(S) Company: Multitex Corporation of America
Articles: Textured yarn a/k/a manufactured carpet yarn; space dyed yarn; spun yarn; air-entangled yarn; tufted carpet; tufted rugs; woven rugs
Merchandise: Nylon yarn a/k/a nylon filament yarn a/k/a bulk continuous filament; polyester yarn a/k/a polyester filament yarn; polypropylene yarn a/k/a olefin yarn a/k/a polypropylene filament yarn; nylon staple fiber; polyester staple fiber
Factories: Calhoun & Dalton, GA; Ulmer, SC
Proposal signed: March 5, 1997
Basis of claim: Appearing in
Contract forwarded to PDs of Customs: Chicago, New York & Miami, November 14, 1997

(T) Company: Novartis Crop Protection, Inc. (successor to Ciba-Geigy Corp.'s T.D. 96–86–E under 19 USC 1313(s))
Articles: Curacron®
Merchandise: Profenofox technical
Factories: McIntosh, AL; Greenville, MS
Proposal signed: May 16, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New York, December 10, 1997

(U) Company: Novartis Crop Protection, Inc. (successor to Ciba-Geigy Corp.'s T.D. 96–62–F under 19 USC 1313(s))
Articles: Banner (a/k/a Alamo)®; Tilt®
Merchandise: Propiconazole Technical
Factories: McIntosh, AL; Bridgeton, MO; Cordele, GA
Proposal signed: May 15, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New York, December 10, 1997

(V) Company: Outokumpu Copper Franklin, Inc.
Articles: Copper tubing, grooved (profiled) and smooth
Merchandise: Copper strip
Factory: Franklin, KY
Proposal signed: August 19, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New York, October 17, 1997

(W) Company: Sumitomo Electric Lightwave Corp.
Articles: Loose tube and central tube fiber optic cable
Merchandise: Natural singlemode optical fiber; UV inked singlemode optical fiber
Factory: Research Triangle Park, NC
Proposal signed: August 26, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: Miami, December 4, 1997

(X) Company: Sun Chemical Corp.
Articles: Organic pigment in presscake, dry, flushed or dispersed form
Merchandise: Fluorescein, tetrabromo disodium salt; Fluorescein; Fluoroescein, tetrabromotetrachloro; Fluoroescein, tetrabromotetrachloro disodium salt; Rhodamine Y dye presscake; Rhodamine B dye presscake; Sulfamic acid granular; Benzoic acid; Phosphorous pentoxide; 12 Hydroxy stearic acid; Para toluene sulfonyl chloride; Oleic acid; Potassium hydroxide; Strontium carbonate; Aluminum sulfate; Sodium molybdate; Barium chloride; Strontium nitrate; Calcium acetate monohydrate; Sodium methylate solution; Benzenesufonic acid 3-nitro-sodium-salt; Diethyl sulfate; Dimethyl succinate; Phthalimide; Naphthalimide; Chloranil; Carbazole; Pantethine; 1,8-Naphthalic anhydride NSA; 2,4,5-Trichloro aniline (2,4,5 TCA); Xylidine 2,4; Ortho anisidine; Solsperse 24000; Hypersol P4981; Anthraquinone 2 sulfonic acid sodium salt; Aquasol 4604; Phenyl hydrazine; Hypersol dispersant P4963; Lilamin LSP–33; Bis amino propyl piperazine; Belloit (Oleic acid); 1 Hydroxy 2 naphthoic acid; Acetoacetanilide; Acetoacet M Xylidide; Acetoacet O Anisidide; Acetoacet O Toluidide; Naphthol ASG; Alpha naphthol; Beta naphthol; Naphthol AS; Naphthol ASBS; Naphthol ASD; Phenyl methyl pyrazolone; Phenyl carbe-

thoxy pyrazolone; Acetoacet P Phenetidide; Acetoacet P Toluidide; P Tolyl methyl pyrazolone; Acetoacet O Chloranilide; Acetoacet sulfanilic acid potassium salt; Metanilic acid; Acetoacet carbamoyl anilide; Acetoacet 2,5 dimethoxy 4 chloroanilide; Schaeffer's salt; Acetoacetanilide carboxy; Naphthol ASCL; Naphthol ASOL; Acetoacet P anisidide; R salt; Naphthol ASPH; Beta oxy naphthoic acid; Acetoacetyamine benzimidazolone; 4,4-Benzidine-2,2'disulfonic acid; Dichlorobenzidine dihydrochloride; 3,3-Dimethoxybenzidine (Dianisidine); P chloro aniline; Sulfanilic acid; 3-Amino-4-methyl-benzamide; Amino 4 methoxy benzanilide; 2,5 Dichloro aniline; P amino benzamide; Broenners acid; O nitro aniline P sulfonic; D salt amine; F salt, sodium salt; P nitro O toluidine; Benzoyl K acid; M nitro P toluidine; O-Naphthionic acid; Aminotoluene sulfonic acid pure; Red lake C amine pure; Amino G salt; Tobias acid; P chloro O nitro aniline; Red lake C amine; P nitro O anisidine; Fast red ITR base; M nitro O anisidine; Aminotoluene sulfonic acid; Chloroaminotoluene sulfonic acid; Anthranilic acid; O chloro P nitro aniline; Meta chloro aniline; Para toluidine; 2,4 Dinitroaniline; M nitro P anisidine; Ethyl C amine; Aniline 2,4 disulfonic acid; Amino R salt; Dianilino terephthalic acid; Ditoluidino terephthalic acid; Dimethyl succinylsuccinate; Di P chloroanilino terephthalic acid; Di M chloroanilino terephthalic acid; MiCro TiO2; Blanc fixe; Red iron oxide; Pigment red 53:1 presscake; Pigment red 144 dye; Acid red 33; Pigment red 169; Perylene tetra carboxilic acid diimide; Perylene tetra carboxilic dianhydride; Vat red 1 presscake; Hypersol synergist L4722; Hypersol synergist L4722 presscake; F D & C yellow 5; Solsperse 22000; Phthalocyanine green 36 BS crude; Phthalocyanine green 7 crude; Pigment green 36 YS; Pigment violet 27; Carbazole violet crude; Carbazole violet crude salted; Pigment violet 3; Ultramarine blue; Phthalocyanine blue crude; Monosulfo blue crude; Phthalocyanine monochloro blue crude; Blue SA; Aluminum phthalocyanine crude; Solsperse 5000; Pigment blue 62; Magenta REO3; Pigment blue 60 crude; Resinall 201; N gum rosin; M gum rosin; WW gum rosin; Methanol; Diethylene glycol; Resinall 4341 (Resinall WP2–210); Resinall WP2–104; Solsperse 17000; Solsperse 6000; Hypersol synergist L4707; Hypersol synergist L4708; Erythrosine; Titanium dioxide; FD&C yellow no. 5, aluminum lake (15%); Iron blue; Manganese violet; Ultramarine blue; Chrome oxide green; Hydrated chrome oxide green; FD&C yellow no. 5, aluminum lake (28%); Pigment yellow 115; Dimethyl sulfate

Factories: Cincinnati, OH; Stanten Island, NY; Newark, NJ; Muskegon, MI; Amelia, OH

Proposal signed: September 22, 1997

Basis of claim: Used in

Contract forwarded to PD of Customs: New York, October 10, 1997

(Y) Company: Unifi Manufacturing, Inc. (successor to Glen Raven Mills, Inc.'s T.D. 85–75–F and successor to Unifi, Inc.'s T.D. 92–29–Y under 19 USC 1313(s))
Articles: Undyed texturized polyester yarn; dyed texturized polyester yarn; undyed texturized nylon yarn; dyed texturized nylon yarn; nylon-covered spandex yarn (gimped yarn)
Merchandise: Undyed polyester filament yarn (POY); undyed texturized polyster yarn; undyed nylon filament yarn (POY); undyed texturized nylon yarn
Factories: Yadkinville (2), Archdale, Mayodan, Reidsville, Madison (3), Stoneville, NC; Staunton, VA
Proposal signed: October 9, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New York, December 4, 1997

(Z) Company: Zeneca Inc.
Articles: Permethrin
Merchandise: Permethric acid methylester (PAM); 3-phenoxybenzyl (PBA)
Factory: Bucks, AL
Proposal signed: September 29, 1994
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, February 21, 1995

APPROVALS UNDER TREASURY DECISION 84–49

(1) Company: Phillips Petroleum Co.
Articles: Petroleum products and petrochemicals
Merchandise: Crude petroleum and petroleum derivatives
Factories: Borger & Sweeny, TX; Woods Cross, UT
Proposal signed: September 2, 1997
Basis of claim: As provided in T.D. 84–49
Contract forwarded to PD of Customs: Houston, December 12, 1997
Revokes: T.D. 95–34(1)

(2) Company: Shell Oil Co.
Articles: Motor gasoline; aviation gasoline; special naphthas; jet fuel; kerosene and range oils; distillate oils; residual oils; lubricating oils; paraffin wax; petroleum coke; asphalt; road oil; still gas; liquefied petroleum gas; petrochemical synthetic rubber; petrochemical plastics and resins; all other petrochemical products
Merchandise: Crude petroleum and petroleum derivatives
Factory: Deer Park, TX
Proposal signed: November 12, 1997
Basis of claim: As provided in T.D. 84–49
Contract forwarded to PD of Customs: Houston, January 5, 1998

19 CFR Parts 10, 123, 128, 141, 143, 145, and 148

(T.D. 98–28)

RIN 1515–AC11

INCREASE OF MAXIMUM AMOUNT FOR INFORMAL ENTRIES TO $2000

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule a proposal to increase, from $1,250 to $2,000, the maximum dollar value prescribed for most informal entries of merchandise under the Customs Regulations. Section 662 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act raised the statutory limit applicable to informal entries to $2,500, and it has been determined that a raise to the intermediate level of $2,000 is appropriate at the present time. This regulatory change will have the effect of reducing the overall regulatory burden on importers and other entry filers by expanding the availability of the simplified informal entry procedures.

EFFECTIVE DATE: July 2, 1998.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Linda Walfish, Office of Field Operations (202–927–0042).

Legal Aspects: Jerry Laderberg, Office of Regulations and Rulings (202–927–2320).

SUPPLEMENTARY INFORMATION:

BACKGROUND

All merchandise imported into the customs territory of the United States is subject to entry and clearance procedures. Section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), provides that the "importer of record" or his authorized agent shall: (1) make entry for imported merchandise by filing such documentation or information as is necessary to enable Customs to determine whether the merchandise may be released from Customs custody; and (2) complete the entry by filing with Customs the declared value, classification and rate of duty applicable to the merchandise and such other documentation or other information as is necessary to enable Customs to properly assess duties on the merchandise and collect accurate statistics with respect to the merchandise and determine whether any other applicable requirement of law is met. Part 142, Customs Regulations (19 CFR Part 142), implements section 484 and prescribes procedures applicable to most Customs entry transactions. These procedures are referred to as formal

entry procedures and generally involve the completion and filing of one or more Customs forms (such as Customs Form 7501, Entry/Entry Summary, which contains detailed information regarding the import transaction) as well as the filing of commercial documents pertaining to the transaction.

As originally enacted, section 498, Tariff Act of 1930 (subsequently codified at 19 U.S.C. 1498), authorized the Secretary of the Treasury to prescribe rules and regulations for the declaration and entry of, among other things, imported merchandise when the aggregate value of the shipment did not exceed such amount, but not greater than $250, as the Secretary shall specify in the regulations. Regulations implementing this aspect of section 498 are contained in Subpart C of Part 143, Customs Regulations (19 CFR Part 143) which is entitled "Informal Entry". The informal entry procedures set forth in Subpart C of Part 143 are less burdensome than the formal entry procedures preations. For example, if authorized by the port director, informal entry may be effected by the filing of a commercial invoice setting forth a declaration signed by the importer or his agent attesting to the accuracy of the information on the invoice.

Section 206 of the Trade and Tariff Act of 1984 (Public Law 98–573, 98 Stat. 2948) amended section 498 by increasing to $1,250 (but with some exceptions) the maximum dollar amount that the Secretary could prescribe by regulation for purposes of the declaration and entry of imported merchandise. On July 23, 1985, T.D. 85–123 was published in the Federal Register (50 FR 29949) to, among other things, increase to $1,000 the regulatory limit for which informal entries could be filed. The regulatory amendments in this regard involved changes to Subpart C of Part 143 and various other provisions of the Customs Regulations that reflected the $250 informal entry dollar limit, and Customs explained in the background portion of T.D. 85–123 that the new limit would be set initially in the regulations at $1,000, with the option to increase it to $1,250 in the future. On August 31, 1989, Customs published in the Federal Register (54 FR 36025) T.D. 89–82 which amended the Customs Regulations by increasing the limit for which informal entries could be filed to the maximum $1,250 permitted under section 498 as amended by section 206 of the Trade and Tariff Act of 1984.

Section 662 of the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057) amended section 498 by increasing to $2,500 the maximum dollar amount that the Secretary could prescribe by regulation for purposes of the declaration and entry of merchandise. As a result of this further increase in the statutory maximum, and in consideration of the fact that the regulatory limit for informal entries had not been increased since 1989, on June 9, 1997, Customs published in the Federal Register (62 FR 31383) a notice setting forth proposed amendments to the Customs Regulations to again increase the regulatory limit for informal entries.

Similar to the approach taken in 1985 and noting that the new statutory maximum still represented a ceiling but did not preclude adoption of a lower regulatory limit, Customs expressed the view in the June 9, 1997, notice of proposed rulemaking that it would be preferable to take an intermediate step by establishing a new informal entry limit of $2,000 which Customs believed would result in the best balance between the revenue and statistical collection and enforcement responsibilities of Customs and the interest of the importing public in having an expanded opportunity to use the less burdensome informal entry procedures. In addition, even if the proposed new $2,000 informal entry limit were to be adopted in a final rulemaking action, the notice pointed out that Customs would still retain the option of proposing a further upward adjustment of the regulatory limit at an appropriate future date, subject to the statutory maximum, after evaluating the operational effect of the new $2,000 limit and any other intervening change in circumstances having an impact on the entry process. The notice of proposed rulemaking made provision for the submission of public comments on the proposed regulatory changes for consideration before adoption of those changes as a final rule, and the prescribed public comment period closed on August 8, 1997.

Discussion of Comments

A total of fifteen commenters responded to the June 9, 1997, notice of proposed rulemaking.

Nine commenters supported the basic principle of increasing the informal entry limit. In addition to expressing support for that basic principle, these nine commenters made the following specific points:

1. Eight commenters favored increasing the informal entry limit to the $2,500 statutory maximum rather than only to $2,000 as proposed.
2. One commenter expressed concern that Customs would not be able to provide in a timely fashion the necessary changes to the Automated Commercial System (ACS) to reflect any increase in the informal entry limit.

While Customs, of course, has no reason to take issue with the general support expressed by the nine commenters, Customs notes the following with regard to the specific points made by these commenters:

1. For the reasons outlined in the notice of proposed rulemaking and summarized above, Customs remains of the opinion that any increase in the informal entry limit beyond the proposed $2,000 level would not be appropriate at the present time.
2. This document prescribes a 90-day (rather than the usual 30-day) delayed effective date in order to give Customs additional time to make the necessary changes to ACS.

Six commenters expressed opposition to the basic principle of increasing the informal entry limit. The following specific points were made by these commenters in this regard:

1. One commenter stated that the informal entry limit should be lowered instead of raised.
2. Two commenters were concerned that the increase in the informal entry limit would lead to products regulated by other agencies, for example, food and medical devices regulated by the Food and Drug Administration (FDA), being more readily admitted if they are in fact unsafe. One of these commenters noted that although Customs can require formal entry under 19 CFR 143.22, there should be a formal Customs policy requiring formal entry for products, regardless of value, sampled by the FDA.
3. Similar to the concern expressed in the comment immediately above, two commenters claimed that an increase in the informal entry limit will allow more importations to be made without a bond being filed, thereby making it more difficult for Customs to protect the revenue or to demand redelivery, especially in the case of unsafe food and medical devices.
4. Four commenters were concerned that there would be a significant loss of statistical data, collected by both the United States and other countries, if the informal entry limit is increased. A major concern expressed was that loss of such data could adversely affect trade policy. It was argued that this loss of data could be significant since there has been a large increase in small and medium size businesses which make small shipments.
5. One commenter proposed that, instead of raising the informal entry limit, Customs should eliminate informal entries for all commercial transactions.
6. One commenter stated that most informal entries under the proposed limit would arrive by courier and, because of the volume and repetition of the shipments, would present opportunid regulations.
7. One commenter argued that an increase in the informal entry limit will add to the burdens on Customs personnel, especially inspectors.
8. One commenter stated that there would be an appreciable loss of merchandise processing fee (MPF) collections, since the MPF for informal entries is less than that for formal entries.
9. One commenter claimed that the requirement to exercise reasonable care contained in 19 U.S.C. 1484 would be removed for a large number of entries because it only applies to formal entries.
10. Finally, one commenter expressed concern that an increase in the informal entry limit would remove entries from the recordkeeping requirements of 19 U.S.C. 1509(a)(1)(a).

The following are the Customs responses to the above points made in opposition to the proposal to increase the informal entry limit:

1. Since Congress was aware of the likely consequence of the amendment to 19 U.S.C. § 1498(a)(1), that is, that the maximum regulatory limit for informal entry would be raised, Customs be-

lieves that lowering the informal entry limit would clearly be in conflict with what Congress had in mind.

2. As already noted by one of these commenters, there is a safeguard in place in that Customs can require a formal entry, regardless of value. Moreover, coordination between the FDA and Customs in the case of entries of merchandise sampled or otherwise regulated by the FDA will continue in order to ensure that unsafe merchandise is not admitted; however, this is an interagency operational issue that Customs does not believe is appropriate for regulatory text. Finally, Customs notes that setting a policy to require importers to make formal entry for all merchandise regulated by the FDA is beyond the scope of the published proposal.

3. As regards revenue protection, since goods that are informally entered are not released prior to Customs determining and collecting duties, taxes and fees, Customs disagrees with this aspect of the comment. Moreover, while it is more difficult to secure redelivery of informally entered noncommercial goods subsequent to their release because such transactions are normally not covered by a Customs bond, Customs notes that most importations involving FDA-controlled goods are commercial transactions which are handled through the Automated Broker Interface (ABI) and thus are covered by a Customs bond even if informally entered; Customs will reiterate and enforce its policy of requiring a bond on all ABI/statement entries, whether formal or informal.

4. While some statistical data will be lost, Congress raised the informal entry limit in order to streamline the entry process and increase efficiency for informal entries. Thus, it appears these benefits outweigh any loss in statistical data. In addition, Customs notes that the informal entry limit has not been raised since 1989, and raising the informal entry limit takes that factor and the effects of inflation into account. Customs will continue its policy of making available to the U.S. Bureau of the Census as much statistical information as possible, and Customs will also work with Census to develop statistical sampling methods for use in trade program areas.

5. Customs notes that 19 U.S.C. 1498 provides no exclusion for commercial merchandise from being entered informally. This comment raises a policy issue that is beyond the scope of the published proposal.

6. Customs believes that the provisions in Part 128 of the Customs Regulations (19 CFR Part 128) covering express consignments provide adequate safeguards in this regard.

7. An increase in the informal entry limit might result in an increased burden on Customs inspectors or other personnel at some, but certainly not all, locations. Appropriate steps will be explored by Customs to address any such resulting workload increases.

8. Customs projects that the proposed increase in the informal entry limit would result in a loss of approximately $20 million per year in MPF collections. However, it must be assumed that Congress took the potential loss of MPF collections into account when it decided to raise the statutory ceiling which controls the maximum informal entry limit.

9. Although a party making an informal entry would not have to comply with the requirements for making formal entry under 19 U.S.C. 1484, 19 CFR 143.26 requires an eligible party making an informal entry to use reasonable care in doing so.

10. Although there is a lesser recordkeeping burden for informal entries because fewer records are prescribed by law or regulation in connection with the informal entry process, Customs notes that 19 U.S.C. 1509(a)(1)(A) does not *per se* make a distinction between formal and informal entries (the statute merely refers to "entry" records). Customs believes that the issue of whether a distinction should be made between formal and informal entries for recordkeeping purposes would be more appropriately addressed in the regulations that specifically deal with recordkeeping requirements.

CONCLUSION

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments should be adopted as a final rule without change.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.),* it is certified that the regulatory amendments will not have a significant economic impact on a substantial number of small entities. The amendments are in response to a statutory change and will have the effect of reducing the regulatory burden on the public. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Aircraft, Canada, Customs duties and inspection, Imports, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR Part 128

Carriers, Couriers, Customs duties and inspection, Entry, Express consignments, Freight, Imports, Informal entry procedures, Manifests, Reporting and recordkeeping requirements.

19 CFR Part 141

Bonds, Customs duties and inspection, Entry of merchandise, Invoices, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 143

Customs duties and inspection, Entry of merchandise, Invoice requirements, Reporting and recordkeeping requirements.

19 CFR Part 145

Customs duties and inspection, Imports, Mail, Postal service, Reporting and recordkeeping requirements.

19 CFR Part 148

Customs duties and inspection, Imports, Personal exemptions, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, Parts 10, 123, 128, 141, 143, 145 and 148 of the Customs Regulations (19 CFR Parts 10, 123, 128, 141, 143, 145 and 148), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * * * *

2. In § 10.1, the introductory text of paragraph (a) and the first sentence of paragraph (b) are amended by removing the reference "$1,250" and adding, in its place, the reference "$2,000".

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for Part 123 is revised to read, and the specific authority citation for § 123.4 continues to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * * * *

Section 123.4 also issued under 19 U.S.C. 1484, 1498;

* * * * * * *

2. In § 123.4, the first sentence of paragraph (b) is amended by removing the reference "$1,250" and adding, in its place, the reference "$2,000".

PART 128—EXPRESS CONSIGNMENTS

1. The authority citation for Part 128 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

2. In § 128.24, paragraph (a) is amended by removing the reference "$1250" wherever it appears and adding, in its place, the reference "$2,000".

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * * * *

Subpart F also issued under 19 U.S.C. 1481;

* * * * * * *

2. In § 141.82, paragraph (d) is amended by removing the reference "$1,250" and adding, in its place, the reference "$2,000".

PART 143—SPECIAL ENTRY PROCEDURES

1. The authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

2. In § 143.21, paragraph (a), the first sentence of paragraph (b), and paragraphs (c), (f) and (g) are amended by removing the reference "$1,250" and adding, in its place, the reference "$2,000".

3. In § 143.22, the second sentence is amended by removing the reference "$1,250" and adding, in its place, the reference "$2,000".

4. In § 143.23, paragraphs (d) and (i) are amended by removing the reference "$1,250" and adding, in its place, the reference "$2,000".

5. In § 143.26, the heading and text of paragraph (a) are amended by removing the reference "$1,250" and adding, in its place, the reference "$2,000".

PART 145—MAIL IMPORTATIONS

1. The authority citation for Part 145 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624.

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618;

* * * * * * *

Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498;

* * * * * * *

Section 145.35 through 145.38, 145.41, also issued under 19 U.S.C. 1498;

* * * * * * *

2. In § 145.4, paragraph (c) is amended by removing the reference "$1,250" and adding, in its place, the reference "$2,000".

3. In § 145.12, paragraphs (a)(2), (a)(3) and (b)(1) and the heading and text of paragraph (c) are amended by removing the reference "$1,250" wherever it appears and adding, in its place, the reference "$2,000".

4. Section 145.35 is amended by removing the reference "$1,250" and adding, in its place, the reference "$2,000".

5. Section 145.41 is amended by removing the reference "$1,250" and adding, in its place, the reference "$2,000".

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The authority citation for Part 148 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States).

* * * * * * *

2. In § 148.23, the heading and text of paragraph (c)(1) and the heading and introductory text of paragraph (c)(2) are amended by removing the reference "$1,250" and adding, in its place, the reference "$2,000".

ROBERT S. TROTTER,
Acting Commissioner of Customs.

Approved: March 18, 1998.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, April 3, 1998 (63 FR 16414)]

19 CFR Part 118

(T.D. 98–29)

RIN 1515–AC07

CENTRALIZED EXAMINATION STATIONS

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations regarding the establishment and scope of operation of Centralized Examination Stations (CESs). To reflect Customs interest in maximizing compliance with export control laws and regulations without unduly impeding the movement of outbound merchandise, the definition of a CES is expanded to allow merchandise intended to be exported as well as imported merchandise to be handled by a CES. The amendment allows outbound cargo to be inspected at CESs at ports other than the shipment's designated port of exit. Further, to make the CES application procedure more amenable to local conditions, this amendment provides CES applicants with more flexibility regarding the time frame to conform a facility to meet Customs security or other physical or equipment requirements. Lastly, this amendment removes one of the criteria on the application to operate a CES because Customs believes it is too subjective. These changes are made in order to keep the CES program responsive to both Customs and the trade community's demands for the facilitated examinations of trade merchandise.

DATES: Effective: May 6, 1998.

FOR FURTHER INFORMATION CONTACT:

For Policy Inquiries: Steven T. Soggin, Office of Field Operations, (202) 927–0765;

For Legal Inquiries: Jerry Laderberg, Office of Regulations and Rulings, Entry Procedures and Carriers Branch, (202) 482–7052.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In 1993, Customs amended the Customs Regulations to provide for the establishment, operation, and termination of Centralized Examination Stations (CESs). A CES is a privately-operated facility, not in the charge of a Customs officer, at which imported merchandise is made available to Customs officers for physical examination. Because merchandise intended to be *exported* is subject to examination, Customs wanted CESs to be authorized to provide inspectional facilities for this merchandise as well. Accordingly, on August 19, 1997, Customs published a Notice of Proposed Rulemaking in the Federal Register (62 FR

44102) that proposed to amend the Customs Regulations regarding the establishment and scope of operation of CESs.

In order to reflect Customs' interest in maximizing compliance with export control laws and regulations without unduly impeding the movement of outbound merchandise, the Notice proposed to expand the definition of a CES to allow merchandise intended to be exported as well as imported merchandise to be handled by a CES. Further, the document proposed to allow for the inspection of outbound cargo at CESs at ports other than the shipments' designated ports of exit. To make the CES application procedure more amenable to local conditions, the document proposed more flexibility regarding the time frame for an applicant to conform a facility to meet Customs security or other physical or equipment requirements. Lastly, Customs proposed to amend one of the criteria on the application to operate a CES because of Customs' belief that it is too subjective. These changes were proposed in order to keep the CES program responsive to both Customs' and the trade community's demands for the facilitated examinations of trade merchandise. These proposed changes to the regulations affected §§ 118.0, 118.22, and 118.23 of the Customs Regulations (19 CFR 118.0, 118.22, and 118.23). The document solicited comments concerning these changes.

The comment period closed on October 20, 1996. Six comments were received. The comments and Customs responses to them follow.

Discussion of Comments

The comments received were from a major manufacturing corporation involved with importing/exporting its products; a trade association representing 1,000 member firms engaged in all aspects of international trade; an exporter of merchandise; a manufacturer that exports its product; a CES operator; and an association representing insurance and surety companies.

Comment:

Four commenters opposed the use of CESs for outbound inspections because they stated that expansion of the CES program to exports will mean that the burdens (needless delays and cost overruns) routinely experienced on the import side with CESs will also occur with examination of exports. These commenters argue that similar processing delays could result in missing the time for lading the merchandise to be exported, which may result in the loss of export sales, leading to a negative impact on the country's balance of trade.

Customs response:

Customs disagrees. Inspection time involved with export examinations is considerably less than the inspection time involved with import examinations due to less paperwork being required. Further, the proposed amendments were designed to keep CESs responsive to the trade community's demands for facilitating examinations. Since the number of export shipments is expected to increase 6% per year, reaching a total value of $ 1.2 trillion by the year 2003, Customs believes that centraliz-

ing outbound examinations will facilitate inspections. As Customs will be able to conduct the outbound examination before merchandise is loaded for transport to a port of exit, unnecessary delays of shipments will be prevented by sparing exporters the expense and delay involved in unloading shipments at dispersed ports of exit for inspection.

Comment:

One commenter stated that the proposed amendment to the Customs custodial bond provision of § 118.4(g) is unnecessary. The commenter stated that the obligation envisioned by the new language, that CES operators will accept and keep safe all merchandise delivered to the CES for examination, currently exists and that unless the amendment serves some significant, but unstated, need, it should be deleted from the final rule.

Customs response:

Customs disagrees with the proposition that the proposed amendment is not necessary because it speaks to an existing obligation. The proposed amendment to § 118.4(g) clarifies Customs policy that a CES operator will accept all merchandise delivered to the CES for examination, thus, eliminating any assumption that CES operators have discretion whether to accept merchandise delivered to the facility for Customs examination. Accordingly, Customs believes that the proposed amendment to § 118.4(g) is necessary.

CONCLUSION

After analysis and review of the comments and further consideration by Customs, Customs has determined to adopt the final rule as it was proposed.

REGULATORY FLEXIBILITY ACT

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities, because the amendments would operate to confer new benefits on potential CES operations, by allowing them to perform more services. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as defined in E.O. 12866.

LIST OF SUBJECTS IN 19 CFR PART 118

Administrative practice and procedure, Customs duties and inspection, Examination stations, Exports, Imports, Licensing, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons stated above, part 118, Customs Regulations (19 CFR part 118), is amended as set forth below:

PART 118—CENTRALIZED EXAMINATION STATIONS

1. The authority citation for part 118 is revised to read as follows:

Authority: 19 U.S.C. 66, 1499, 1623, 1624; 22 U.S.C. 401; 31 U.S.C. 5317.

2. In § 118.1, the first sentence is amended by removing the word "imported", and a new sentence is added at the end to read as follows:

§ 118.1 Definition.

* * * To present outbound cargo for inspection at a CES at a port other than the shipment's designated port of exit, either proof of the shipper's consent to the inspection must be furnished or a complete set of transportation documents must accompany the shipment to evidence that exportation of the goods is imminent and that the goods are committed to export, thereby, making them subject to Customs examination.

3. In § 118.4, paragraph (g) is amended by adding a new second sentence to read as follows:

§ 118.4 Responsibilities of a CES operator.

* * * * * * *

(g) * * * The CES operator will accept and keep safe all merchandise delivered to the CES for examination. * * *

* * * * * * *

4. In § 118.11, the second sentence in paragraph (b) is amended by removing the words ", and the port director may allow, up to an additional 30 calendar days after tentative selection to conform the facility to such requirements, but in such a case the agreement referred to in § 118.3 of this part shall not be executed until those requirements are met" and adding, in their place, the words "time to conform the facility to such requirements. The agreement referred to in § 118.3 of this part shall not be executed, in any event, until the facility is conformed to meet the requirements"; and paragraph (g) is amended by removing the words ", or a commitment to acquire that knowledge".

SAMUEL H. BANKS,
Acting Commissioner of Customs.

Approved: March 13, 1998.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, April 6, 1998 (63 FR 16683)]

(T.D. 98–30)

FOREIGN CURRENCIES

Daily Rates for Countries Not on Quarterly List for March 1998

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): None.

Greece drachma:

March 1, 1998	$0.003478
March 2, 1998	.003483
March 3, 1998	.003497
March 4, 1998	.003484
March 5, 1998	.003466
March 6, 1998	.003448
March 7, 1998	.003448
March 8, 1998	.003448
March 9, 1998	.003461
March 10, 1998	.003452
March 11, 1998	.003452
March 12, 1998	.003465
March 13, 1998	.003404
March 14, 1998	.003404
March 15, 1998	.003404
March 16, 1998	.003125
March 17, 1998	.003128
March 18, 1998	.003096
March 19, 1998	.003095
March 20, 1998	.003098
March 21, 1998	.003098
March 22, 1998	.003098
March 23, 1998	.003117
March 24, 1998	.003120
March 25, 1998	.003136
March 26, 1998	.003145
March 27, 1998	.003145
March 28, 1998	.003145
March 29, 1998	.003145
March 30, 1998	.003130
March 31, 1998	.003130

South Korea won:

March 1, 1998	$0.000612
March 2, 1998	.000644
March 3, 1998	.000642
March 4, 1998	.000639
March 5, 1998	.000623
March 6, 1998	.000611
March 7, 1998	.000611
March 8, 1998	.000611
March 9, 1998	.000619

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for March 1998 (continued):

South Korea won (continued):

March 10, 1998	$0.000626
March 11, 1998	.000632
March 12, 1998	.000645
March 13, 1998	.000654
March 14, 1998	.000654
March 15, 1998	.000654
March 16, 1998	.000682
March 17, 1998	.000680
March 18, 1998	.000672
March 19, 1998	.000678
March 20, 1998	.000689
March 21, 1998	.000689
March 22, 1998	.000689
March 23, 1998	.000729
March 24, 1998	.000725
March 25, 1998	.000719
March 26, 1998	.000715
March 27, 1998	.000724
March 28, 1998	.000724
March 29, 1998	.000724
March 30, 1998	.000722
March 31, 1998	.000722

Taiwan N.T. dollar:

March 1, 1998	$0.031056
March 2, 1998	.031153
March 3, 1998	.031153
March 4, 1998	.031201
March 5, 1998	.031056
March 6, 1998	.031008
March 7, 1998	.031008
March 8, 1998	.031008
March 9, 1998	.031008
March 10, 1998	.030864
March 11, 1998	.030912
March 12, 1998	.030817
March 13, 1998	.030769
March 14, 1998	.030769
March 15, 1998	.030769
March 16, 1998	.030769
March 17, 1998	.030675
March 18, 1998	.030395
March 19, 1998	.030441
March 20, 1998	.030441
March 21, 1998	.030441
March 22, 1998	.030441
March 23, 1998	.030488
March 24, 1998	.030534
March 25, 1998	.030581
March 26, 1998	.030684
March 27, 1998	.030647

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for March 1998 (continued):

Taiwan N.T. dollar (continued):	
March 28, 1998	$0.030647
March 29, 1998	.030647
March 30, 1998	.030534
March 31, 1998	.030349

Dated: April 1, 1998.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D. 98–31)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR MARCH 1998

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 98–6 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): None.

Japan yen:	
March 2, 1998	$0.007976
Malaysia dollar:	
March 1, 1998	$0.269906
March 2, 1998	.276243
March 13, 1998	.268097
March 14, 1998	.268097
March 15, 1998	.268097
March 18, 1998	.273598
March 19, 1998	.272480
March 20, 1998	.273973
March 21, 1998	.273973
March 22, 1998	.273973
March 23, 1998	.282087
March 24, 1998	.273598
March 25, 1998	.278552
March 26, 1998	.278164
March 27, 1998	.280308
March 28, 1998	.280308
March 29, 1998	.280308
March 30, 1998	.274725
March 31, 1998	.273224

FOREIGN CURRENCIES—Variances from quarterly rates for March 1998 (continued):

Mexico peso:

March 1, 1998	$0.117268
March 2, 1998	.117689
March 3, 1998	.117233
March 4, 1998	.116455
March 5, 1998	.116104
March 6, 1998	.116245
March 7, 1998	.116245
March 8, 1998	.116245
March 9, 1998	.115955
March 10, 1998	.115908
March 11, 1998	.115393
March 12, 1998	.116618
March 13, 1998	.116822
March 14, 1998	.116822
March 15, 1998	.116822
March 16, 1998	.116455
March 17, 1998	.116381
March 18, 1998	.116822
March 19, 1998	.116720
March 20, 1998	.116537
March 21, 1998	.116537
March 22, 1998	.116537
March 23, 1998	.117165
March 24, 1998	.117165
March 25, 1998	.117302
March 26, 1998	.117385
March 27, 1998	.117302
March 28, 1998	.117302
March 29, 1998	.117302
March 30, 1998	.117151
March 31, 1998	.117371

Singapore dollar:

March 2, 1998	$0.619579
March 13, 1998	.625782
March 14, 1998	.625782
March 15, 1998	.625782
March 16, 1998	.623053
March 17, 1998	.621311
March 18, 1998	.622278
March 19, 1998	.620347
March 20, 1998	.623247
March 21, 1998	.623247
March 22, 1998	.623247
March 23, 1998	.624220
March 24, 1998	.620732
March 25, 1998	.625000
March 26, 1998	.625391
March 27, 1998	.628931
March 28, 1998	.628931
March 29, 1998	.628931
March 30, 1998	.622278

FOREIGN CURRENCIES—Variances from quarterly rates for March 1998 (continued):

Thailand baht (tical):

March 1, 1998	$0.023175
March 2, 1998	.022624
March 3, 1998	.022727
March 4, 1998	.022371
March 5, 1998	.022222
March 6, 1998	.022422
March 7, 1998	.022422
March 8, 1998	.022422
March 9, 1998	.022346
March 10, 1998	.022857
March 11, 1998	.022831
March 12, 1998	.023239
March 13, 1998	.024752
March 14, 1998	.024752
March 15, 1998	.024752
March 16, 1998	.024938
March 17, 1998	.024876
March 18, 1998	.024390
March 19, 1998	.025000
March 20, 1998	.025126
March 21, 1998	.025126
March 22, 1998	.025126
March 23, 1998	.025940
March 24, 1998	.025773
March 25, 1998	.026008
March 26, 1998	.025840
March 27, 1998	.026316
March 28, 1998	.026316
March 29, 1998	.026316
March 30, 1998	.025907
March 31, 1998	.025253

Dated: April 1, 1998.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D. 98–32)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE: APRIL 1 THROUGH JUNE 30, 1998

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of 31 U.S.C. 5151, for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Country	Name of currency	U.S. dollars
Australia	Dollar	$0.659000
Austria	Schilling	0.076693
Belgium	Franc	0.026137
Brazil	Cruzado	0.879275
Canada	Dollar	0.705467
China, P.R.	Renminbi yuan	0.120337
Denmark	Krone	0.141433
Finland	Markka	0.177683
France	Franc	0.160953
Germany	Deutsche mark	0.539316
Hong Kong	Dollar	0.129041
India	Rupee	0.025284
Iran	Rial	N/A
Ireland	Pound	1.386000
Israel	Shekkel	N/A
Italy	Lira	0.000547
Japan	Yen	0.007476
Malaysia	Dollar	0.270088
Mexico	Peso	0.116279
Netherlands	Guilder	0.478698
New Zealand	Dollar	0.549000
Norway	Krone	0.129786
Philippines	Peso	N/A
Portugal	Escudo	0.005263
Singapore	Dollar	0.616333
South Africa, Republic of	Rand	0.198138
Spain	Peseta	0.006353
Sri Lanka	Rupee	0.016064
Sweden	Krona	0.124486
Switzerland	Franc	0.652103
Thailand	Baht (tical)	0.025256
United Kingdom	Pound	1.674000
Venezuela	Bolivar	0.001903

Dated: April 1, 1998.

FRANK CANTONE,
Chief,
Customs Information Exchange.

U.S. Customs Service

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

COST SUBMISSIONS

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Cost Submissions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 5, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will

be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Cost Submissions
OMB Number: 1515–0085
Form Number: Customs Form 247
Abstract: These cost submissions, Customs Form 247, are used by importers to furnish cost information to Customs which serves as the basis to establish the appraised value of imported merchandise.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 1,000
Estimated Time Per Respondent: 50 hours
Estimated Total Annual Burden Hours: 50,000
Estimated Total Annualized Cost on the Public: N/A

Dated: March 31, 1998.

J. EDGAR NICHOLS,
Team Leader, Information Services Group.

[Published in the Federal Register, April 6, 1998 (63 FR 16860)]

PROPOSED COLLECTION; COMMENT REQUEST

ARTICLES ASSEMBLED ABROAD WITH TEXTILE COMPONENTS CUT TO SHAPE IN THE U.S.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Articles Assembled Abroad with Textile Components Cut to Shape in the U.S.. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 5, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar

Nichols, Room 3.2C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Articles Assembled Abroad with Textile Components Cut to Shape in the U.S.

OMB Number: 1515–0207

Form Number: N/A

Abstract: This collection of information enables Customs to ascertain whether the conditions and requirements relating to 9802.00.80, HTSUS, have been met.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 500

Estimated Time Per Respondent: 20 minutes

Estimated Total Annual Burden Hours: 750

Estimated Total Annualized Cost on the Public: N/A

Dated: March 31, 1998.

J. EDGAR NICHOLS,
Team Leader, Information Services Group.

[Published in the Federal Register, April 6, 1998 (63 FR 16860)]

PROPOSED COLLECTION; COMMENT REQUEST

IMPORTER'S PREMISES VISIT—SIGNIFICANT IMPORTATION REPORT

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Customs Form 213, Importer's Premises Visit—Significant Importation Report. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 5, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Importer's Premises Visit—Significant Importation Report

OMB Number: 1515–0081

Form Number: Customs Form 213

Abstract: The Customs Form 213 constitutes a summary report of an interview and findings of an Importer's Premises Visit by a Customs Officer. This collection ensures uniformity among importers. These in-

terviews are conducted by Customs based on its responsibilities involving the appraisement and admissibility of merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 7,385
Estimated Time Per Respondent: 2.4 hours
Estimated Total Annual Burden Hours: 17,724
Estimated Total Annualized Cost on the Public: N/A

Dated: March 31, 1998.

J. EDGAR NICHOLS,
Team Leader, Information Services Group.

[Published in the Federal Register, April 6, 1998 (63 FR 16861)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 1, 1998.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF AN ARTICLE IDENTIFIED AS "TATTOO GRAPHIX"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of an article known as "Tattoo Graphix" under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before May 15, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, General Classification Branch (202) 927–2404

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Moderniza-

tion) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of an article known as "Tattoo Graphix." "Tattoo Graphix" contains the materials needed to "Make lots of cool & creepy Tattoos!" The article is composed of a plastic carrying case/storage case/drawing surface (described as a "creepy crawlers Tattoo machine"), six sheets of Tattoo designs, four non-toxic, colored markers, thirty sheets of blank Tattoo paper, one plastic water applicator bottle, and a sheet of instructions, all of which are imported in a decorative cardboard box. Comments are invited on the correctness of the proposed ruling.

In Headquarters Ruling (HQ) 957894 dated December 14, 1995, Customs determined that "Tattoo Graphix" was classifiable under subheading 3926.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies." This classification resulted from a determination that "Tattoo Graphix" in its entirety was not a toy set for tariff purposes and, that as a GRI 3(b) set, the carrying case clearly predominated over the other components used to trace, draw, cut and transfer the decal to the user's moistened skin. HQ 957894 is set forth as Attachment A to this document.

Upon further examination, we are of the opinion that these articles are used together in combination to occupy the user in an agreeable or pleasing way. Their combined use is a source of amusement because the combination allows a user to implement imagination and create an amusing temporary tattoo. Application of the factors enumerated in *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979, for determining whether an article falls within a particular class or kind of good, confirms that "Tattoo Graphix" is a toy. As such, "Tattoo Graphix" is classifiable as a toy set. Therefore, Customs intends to revoke HQ 957894 to reflect the proper classification of "Tattoo Graphix" under subheading 9503.70.00, HTSUS, which provides for "[o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other toys, put up in sets or outfits, and parts and accessories thereof." Proposed HQ 959232 revoking HQ 957894 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: March 27, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 14, 1995.

CLA-2 RR:TC:FC 957894 GGD
Category: Classification
Tariff No. 3926.10.0000

M. BARRY LEVY, ESQUIRE
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
67 Broad Street
New York, NY 10004

Re: "Tattoo Graphix" Set.

DEAR MR. LEVY:

This letter is in response to your request of March 22, 1995, on behalf of your client, Toy Max, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of an article identified as "Tattoo Graphix," imported from China. A sample was submitted with your inquiry. Subsequent to your request and submission, a conference was held with Headquarters personnel on May 17, 1995. An additional written submission, dated June 2, 1995, has been received and considered.

Facts:

The sample article, identified by item no. 7007, contains the materials needed to "Make lots of cool & creepy tattoos!" The article is composed of a plastic carrying case/storage case/ drawing surface (described as a "creepy crawlers tattoo machine"), six sheets of tattoo designs, four non-toxic, colored markers, thirty sheets of blank tattoo paper, one plastic water applicator bottle, and a sheet of instructions, all of which are imported in a decorative cardboard box. The article is designed for use by children of ages five and up. A child chooses a tattoo design to place under the tattoo paper in the case's frame. The design is then traced and colored on the tattoo paper and cut out (scissors not included). After the child's skin is moistened, the tattoo is placed on the skin, pressed or rubbed, then peeled back to reveal the tattoo. A child may also create his/her own designs. The retail package, which is suitable for direct sale without repacking, measures approximately 14 inches in length by 10 inches in height by 2 inches in depth.

Issue:

Whether the article containing multiple components allowing the user to learn an artistic technique and create a product is a toy set.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 9503, HTSUS, provides for "Other toys * * * and accessories thereof," i.e., all toys not specifically provided for in the other headings of chapter 95. Although the term "toy" is not defined in the tariff, the EN to chapter 95 indicate that a toy is an article designed for the amusement of children or adults. The EN to heading 9503 indicate that certain toys, including toy arms, tools, gardening sets, tin soldiers, etc., are often put up in sets, and that collections of items separately classifiable in other headings are classified in chapter 95 when put up in a form clearly indicating their use as toys (e.g., instructional toys such as chemistry sets, sewing sets, etc.).

The recently added "Subheading Explanatory Note to Subheading 9503.70" states in pertinent part that, for the purpose of the subheading, "[s]ets" are two or more different types of articles (principally for amusement), put up in the same packing for retail sale without repacking. Simple accessories or objects of minor importance intended to facilitate the use of the articles may also be included."

In Headquarters Ruling Letter (HRL) 950700, issued August 25, 1993, we discussed the circumstances in which certain items may be classified in subheading 9503.70, as toys put up in sets. We stated that the application of the toy set provision is relatively straightforward when each item within a set would **individually** be classified as a toy, as opposed to an assortment consisting entirely or partly of items which individually would be classified elsewhere in the HTSUS. In either case, we noted that subheading 9503.70, encompasses a combination of two or more mutually complementary, complete articles in a retail package, the essential character of which is established by the combination of the items (not by any individual item), and that the components should generally be used together to provide amusement.

In this case, we find that the separately classifiable components are not toys, nor are they put up in a form clearly indicating their use as toys. This is so even though the articles are put up in colorful retail packaging suggesting that amusing articles are to be found within and that "It's fun to make and wear 'real' tattoos!" It is, further, likely that the articles would be sold in toy stores alongside toys because of their appeal to children. These factors are not enough, however, to transform articles that are not toys into toys for tariff purposes.

In examining the articles, we find that the carrying case clearly predominates over the other components, all of which are directly related to tracing, drawing, cutting, and transferring the decal to the user's moistened skin. Although the individual articles are not excluded from heading 9503 (as would be coloring books and crayons), we find that the items are put up in a form to be principally used to trace, draw, cut and transfer and not primarily to amuse. "Tattoo Graphix" is therefore not classified in subheading 9503.70, HTSUS. The article cannot be classified by reference to GRI 1 because its individual components are classifiable in different headings, i.e., headings 4823, 4911, 9608, and either 3923 or 3926, HTSUS, which cover the blank paper, printed pictures, colored markers, and case, respectively.

In pertinent part, GRI 2(b) states that:

> [t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

GRI 3(a) states, in pertinent part, that:

> when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Therefore, to determine under which provision the article will be classified, we look to GRI 3(b), which states in pertinent part that:

> [m]ixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

With respect, initially, to whether "Tattoo Graphix" comprises "goods put up in sets," we look to Explanatory Note X to GRI 3(b), which indicates that for purposes of the rule, the term "goods put up in sets for retail sale" means goods which:

> (a) consist of at least two different articles which are prima facie, classifiable in different headings;
> (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
> (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

As previously noted, the subject goods meet criteria (a) and (c). With regard to criterion (b), we have found that the items are put up together to carry out the specific activity of tracing, drawing, cutting and transferring the decal. The article is a set.

In order to determine the essential character of the set, we next view Explanatory Note VIII to GRI 3(b), which provides the following guidance:

> The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

The case component predominates over the article's other components due not only to its greater bulk and value, but also to the fact that it stores, transports, and provides a working surface for tracing the tattoos and a holder for the drawing implements. The case imparts the set's essential character.

With respect to the competing provisions for the case's (and thus the set's) classification, we first look to heading 3923, HTSUS. Heading 3923 provides for articles for the conveyance or packing of goods, of plastics. The EN to heading 3923 indicate that:

> [t]his heading covers all kinds of plastics commonly used for the packing or conveyance of all kinds of products. The articles covered include:
>
> (a) Containers such as boxes, cases, crates, sacks and bags (including cones and refuse sacks), casks, cans, carboys, bottles and flasks.
>
> The heading also covers cups without handles having the character of containers used for the packing or conveyance of certain foodstuffs, whether or not they have a secondary use as tableware or toilet articles.
>
> (b) Spools, cops, bobbins and similar supports including video or audio cassettes without magnetic tape.
>
> (c) Stoppers, lids, caps and other closures.

In Headquarters Ruling Letter (HRL) 954816, issued December 7, 1993, this office considered headings 3923 and 3926, and classified a waist bag in heading 3926, HTSUS, as if it were composed entirely of plastic materials. We cited to HRL 954072, issued September 2, 1993, for that ruling's observation that the exemplars cited in the EN to heading 3923 make it "clear that this heading provides for cases and containers of bulk goods and commercial goods and not personal items." It was determined that since the waist bag was clearly designed to carry personal effects, it was not described by heading 3923. We likewise find that the "Tattoo Graphix" case is not designed to carry, nor does it carry, bulk or commercial goods, and is not classifiable in heading 3923, HTSUS.

Heading 3926, HTSUS, provides for "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914." The EN to heading 3926 indicate that the heading covers articles of plastics or other materials not elsewhere included or specified, including (among other items) "[o]ffice or school supplies." In light of the case's use as both a drawing surface and carrier of pencils, paper, and printed materials, we find that it is correctly classified in heading 3926. The proper subheading is 3926.10.0000, HTSUSA.

Holding:

The article identified as "Tattoo Graphix" (item no. 7007), is properly classified in subheading 3926.10.0000, HTSUSA, the provision for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies." The applicable duty rate is 5.3 percent ad valorem.

JOHN ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 959232 MMC
Category: Classification
Tariff No. 9503.70.00

BARRY LEVY, ESQUIRE
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
67 Broad Street
New York, NY 10004

Re: HQ 957894 revoked; "Tattoo Graphix".

DEAR MR. LEVY:

On December 14, 1995, this office issued to you, on behalf of Toy Max, Headquarters Ruling (HQ) 957894, in which Customs classified an article known as "Tattoo Graphix," under subheading 3926.10.000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subheading 3926.10.0000, HTSUS, provides for "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies." "Tattoo Graphix" is composed of a plastic carrying case/storage case/drawing surface (described as a "creepy crawlers Tattoo machine"), six sheets of Tattoo designs, four non-toxic, colored markers, thirty sheets of blank Tattoo paper, one plastic water applicator bottle, and a sheet of instructions, all of which are imported in a decorative cardboard box. This classification resulted from a determination that "Tattoo Graphix" in its entirety was not a toy set for tariff purposes and, that as a General Rule of Interpretation (GRI) 3(b) set, the carrying case clearly predominated over the other components used to trace, draw, cut and transfer the decal to the user's moistened skin.

Upon further examination, we are of the opinion that "Tattoo Graphix" is properly classified in heading 9503, HTSUS, which provides for "[o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof."

Facts:

The sample article, identified as item no. 7007, contains the materials needed to "Make lots of cool & creepy tattoos!" The article is composed of a plastic carrying case/storage case/ drawing surface (described as a "creepy crawlers Tattoo machine"), six sheets of tattoo designs, four non-toxic, colored markers, thirty sheets of blank tattoo paper, one plastic water applicator bottle, and a sheet of instructions, all of which are imported in a decorative cardboard box. The article is designed for use by children ages five and up. A child chooses a tattoo design to place under the tattoo paper in the case's frame. The design is then traced and colored on the tattoo paper and cut out (scissors not included). After the child's skin is moistened, the tattoo is placed on the skin, pressed or rubbed, then peeled back to reveal the tattoo. A child may also create his/her own designs. The retail package, which is suitable for direct sale without repacking, measures approximately 14 inches in length by 10 inches in height by 2 inches in depth.

Issue:

What is the proper classification of "Tattoo Graphix?"

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section and chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then

be applied. The relevant headings and subheadings considered when classifying "Tattoo Graphix" were as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof
* * * * * * *	
9503.70	Other toys, put up in sets or outfits, and parts and accessories thereof

The term "toy" is not defined in the HTSUS. However, in understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See*, T.D. 89–90, 54 FR 35127, 35128 (August 23, 1989).

The ENs to Chapter 95 state, in pertinent part, that "[t]his Chapter covers toys of all kinds whether designed for the amusement of children or adults." Although not set forth as a definition of "toys," we have interpreted the just-quoted passage from the ENs as equating "toys" with articles "designed for the amusement of children or adults," although we believe such design must be corroborated by evidence of the articles' principal use.

When the classification of an article is determined with reference to its principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods *of that class or kind to which the imported goods belong*, and the controlling use is the principal use. In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the U.S. Court of International Trade (CIT) has provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979.

Tattoo Graphix's general physical characteristics, mainly its bright colors and wash off tattoos, indicate that it was principally used as a toy. Its manner of advertisement and display further confirms its use as a toy in such phrases like "Make lots of cool & creepy tattos!" which appear ont he box and in the directions. Moreover, "Tattoo Graphix" was principally used in the same manner as toys; meaning it was principally used to employ imagination and to amuse by allowing a child to create and then wear a temporary tattoo.

The ENs for heading 95.03 provide, in pertinent part, that:

> [c]ollections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this Chapter when they are put up in a form clearly indicating their use as toys (e.g., instructional toys such as chemistry, sewing, etc., sets).

With respect to toy sets, the ENs for subheading 9503.70 provide, in pertinent part, that:

> "[s]ets" are two or more different types of articles (principally for amusement), put up in the same packing for retail sale without repacking. Simple accessories or objects of minor importance intended to facilitate the use of the articles may also be included.

It is Customs position that "toys put up in sets or outfits" (subheading 9503.70) is an *eo nomine* provision denoting a clearly identifiable class or kind of goods. Consequently, goods may be classified in subheading 9503.70 pursuant to GRI 1, and recourse to the other GRI's, particularly the provisions of GRI 3 relating to sets, is unnecessary. *See, e.g.*, HQ 086407 of March 22, 1990, HQ 086330 of May 14, 1990, and HQ 950700. Such sets typically contain complementary articles intended for use together, rather than individually, to provide amusement. However, there is no requirement that the component of the set *only* be capable of use *together*, and the ability of one or more of the components to be used individually does not disqualify classification as a toy set. It is sufficient that the components of the toy set possess a clear nexus which contemplates a use together to amuse.

Because Tattoo Graphix's components combine a variety of complete articles which are intended for use together to occupy the user in a pleasant or enjoyable (*i.e.*, amusing) way, "Tattoo Graphix" meets the requirements for classification as a toy, specifically a toy set. We note that in HQ 957894, we indicated that "Tattoo Graphix" was not classifiable as a toy set because a single component of the set, the carrying case, predominated over the other set components. Further review of the HTSUS and the EN's disclose no basis for imposing such a rule. Inasmuch as any finding of a component's predominance would have no impact on a finding that the components together constitute a collection of articles designed and principally used for amusement, we have determined this rule to be inappropriate. As a result of finding "Tattoo Graphix" to be a toy properly classified in Chapter 95, classification of the articles elsewhere in the HTSUS is precluded. *See* Note 2(v) to Chapter 39, Additionally, we have previously noted that the manner in which articles are packaged and sold in combination can convert the articles from their design and use as articles classified elsewhere in the HTSUS to toys (*see* HQ 950700). Such a conversion occurred with respect to the various components in the set at issue, a fact that was overlooked in HQ 957894.

Holding:

"Tattoo Graphix" is classifiable as a toy set under subheading 9503.70.00, HTSUS, as [o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other toys, put up in sets or outfits, and parts and accessories thereof, with a column one free rate of duty.

HQ 957894 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF MULTIFUNCTION MACHINE

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of the MFC–1770 multifunction machine (MFC–1770) under the Harmonized Tariff Schedule of the United States (HTSUS). This multifunction machine, which operates on the principle of thermal transfer technology, is capable of performing printer, facsimile, copier, and scanner functions using a personal computer.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 15, 1998.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Attorney-Advisor, Commercial Rulings Division, (202) 927–2337.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 25, 1998, Customs published a notice in the CUSTOMS BULLETIN, Volume 32, Number 8, proposing to revoke NY B87981, is-

sued on August 5, 1997, concerning the tariff classification of the MFC–1770. No comments were received in response to the notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NY B87981 to reflect the proper classification of the MFC–1770 under subheading 8471.60.65, HTSUS, as an other automatic data processing thermal transfer printer unit. HQ 961153 revoking NY B87981 is set forth as the Attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

Dated: March 30, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, March 30, 1998.

CLA–2 RR:CR:GC 961153 DWS
Category: Classification
Tariff No. 8471.60.65 and 8524.99.90

MS. SANDRA LISS FRIEDMAN
BARNES, RICHARDSON & COLBURN
475 Park Avenue South
New York, NY 10016

Re: Reconsideration of NY B87981; MFC 1770 multifunction machine; GRI 3(b); composite good; Explanatory Note 3(b)(VIII); essential character; HQs 958124 and 958348; NYs B87982, B87181, A88887, and B89972; Chapter 85, Note 6; 8517.21.00; 8524.99.60.

DEAR MS. FRIEDMAN:

This is in response to your letter of December 1, 1997, on behalf of Brother International Corporation, requesting reconsideration of NY B87981, dated August 5, 1997, concerning the classification of the MFC 1770 multifunction machine (MFC 1770) under the Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub.L. 103–82, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY B87981 was published on February 25, 1998, in the CUSTOMS BULLETIN, Volume 32, Number 8. No comments were received in response to the notice.

Facts:

The MFC 1770 is a 5-in-1 multifunction machine which operates on the principle of thermal transfer technology. The machine, which is compatible with any personal computer

(PC) using a Microsoft Windows environment, is capable of performing printer, facsimile, copier, and scanner functions. For the machine to perform as a printer, it must be connected to a PC through a serial port. The MFC 1770 prints at the rate of two pages per minute at a resolution of 200 x 400 dots per inch (dpi). You state that, because of its speed, the MFC 1770 is not purchased for high volume use. Instead, it is generally purchased for use in the home or small business by low volume users.

The MFC 1770 is also capable of sending and receiving faxes at a resolution of up to 200 x 400 dpi, depending on such factors as telephone line quality and scanner resolution chosen, if applicable. Because of these variables, you claim that the quality of the document produced using the printer function will generally be better than the quality of the document produced using the facsimile function. In addition, the MFC 1770 is capable of scanning text or graphic images at a resolution up to 400 x 400 dpi. The MFC 1770 is also capable of sending and receiving faxes directly through the PC, and producing copies of documents.

In its imported condition, the MFC 1770 incorporates a thermal print engine, consisting of a print head, power supply, main control board, software, and cable connection necessary for its use with a PC. It is our understanding that the software, which is imported in three 3 1/2 inch disks, provides the necessary linkage between the MFC–1770 and a PC to allow for the operation of the printer, PC facsimile, and scanner functions. You have stated that, once the software is downloaded, a series of interactive instructional images appear on the PC monitor directing the user in setting up the linkage. The thermal print head is also used for the facsimile and copier functions. In addition, the MFC 1770 incorporates a paper handling guide, paper drive, and drive motor for paper transport. The machine will be shipped with the printing cartridge removed; the cartridge will be packaged separately and shipped in the same carton with the MFC.

Issue:

Whether the MFC 1770 is classifiable under subheading 8471.60.65, HTSUS, as an other automatic data processing (ADP) thermal transfer printer unit, or under subheading 8517.21.00, HTSUS, as a facsimile machine.

Whether the software is classifiable under subheading 8524.99.60, HTSUS, as other recorded media for reproducing representations of instructions, data, sound, and image, or under subheading 8524.99.90, HTSUS, as other recorded media.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.60	Input or output units, whether or not containing storage units in the same housing:
	Other:
	Printer units:
	Other:
8471.60.65	Thermal transfer.
* * * * * * *	
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof:
	Facsimile machines and teleprinters:
8517.21.00	Facsimile machines.
* * * * * * *	
8524	Records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of chapter 37:
	Other:
8524.99	Other:
	Other:

8524.99.60	For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded media.
8524.99.90	Other.

* * * * * * *

In NY B87981, which held the MFC 1770 to be classifiable under subheading 8517.21.00, HTSUS, Customs stated that the essential character of the machine, which constitutes a composite good, is imparted by the facsimile function.

Because the MFC 1770 constitutes a composite good, we must consult GRI 3(b), which states that:

> [m]ixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). Explanatory Note 3(b)(VIII) (p. 4) states that:

> [t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In NY B87981, Customs stated that:

> [t]he features of the printer, scanner, and copier are less significant. The printing components of this thermal type printer engine, compared with other multi-purpose machines and standard printers, is slower at two pages per minute. The 200 x 400 dpi resolution is lower that [sic] the 300 x 300 dpi or higher that is standard with printers today.

It is now our understanding that the 300 x 300 dpi standard that the MFC 1770 was compared against is applicable to laser printers. As thermal transfer printers are of a different class of printers from laser printers, the printer function of the MFC 1770 should not have been compared against such a standard. You have provided evidence that thermal transfer technology is used in a wide variety of products (besides printers) whose main function is printing, such as typewriters and labeling machines. Not only is the MFC 1770 print head used for the printer function, it is also used for the facsimile and copier functions. Although the MFC 1770 prints only two pages per minute, the machine is marketed for low volume users in the home or small business, users which may not require the speed of laser printer machines. Based upon the description of the MFC 1770 you provided, it is our position that the essential character of the machine is imparted by the printer function. Therefore, the MFC 1770 is classifiable under subheading 8471.60.65, HTSUS, as an other automatic data processing ADP thermal transfer printer unit. *See* several rulings which have held multifunction machines to be classifiable as ADP printer units in heading 8471, HTSUS: HQ 958124, dated March 13, 1996; HQ 958348, dated January 17, 1996; NY B87982, dated August 4, 1997; NY B87181, dated July 2, 1997; NY A88887, dated October 31, 1996; and NY B89972, dated October 2, 1997.

With regard to the classification of the software, chapter 85, note 6, HTSUS, states that:

> [r]ecords, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are entered with the apparatus for which they are intended.

You claim that the software is classifiable under subheading 8524.99.60, HTSUS. However, as it is our understanding that the software is not for reproducing representations of instructions, data, sound, **and** image (all four representations required), the software is precluded from classification under subheading 8524.99.60, HTSUS. Therefore, it is our position that the software is classifiable under subheading 8524.99.90, HTSUS.

Holding:

The MFC 1770 multifunction machine is classifiable under subheading 8471.60.65, HTSUS, as an other ADP thermal transfer printer unit.

The software is classifiable under subheading 8524.99.90, HTSUS, as other recorded media.

NY B87981 is revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs regulations [19 CFR 177.10(c)(1)].

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF LORATADINE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L.. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of loratadine. The merchandise is an antihistaminic drug. Notice of the proposed revocation was published on February 18, 1998, in the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Romero, Attorney-Advisor, Commercial Rulings Division at 202–927–2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 18, 1998, a notice of proposed revocation of HQ 952066, dated August 12, 1992, was published in the CUSTOMS BULLETIN, Volume 32, Number 6. No comments were received in response to the notice. In HQ 952066, Customs incorrectly classified loratadine in subheading 2933.90.26, Harmonized Tariff Schedule of the United States (HTSUS), a provision for other heterocyclic compounds with nitrogen heteroatom(s) only: nucleic acids and their salts: other aromatic or modified aromatic: drugs: antihistamines. This merchandise is correctly classified in subheading 2933.39.41, HTSUS (formerly subheading 2933.39.37, HTSUS), which provides for heterocyclic compounds con-

taining nitrogen hetero-atom(s) only; other compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure: other: other: other drugs.

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)] as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L.. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking HQ 952066 to reflect the proper tariff classification of loratadine in subheading 2933.39.41, HTSUS, which provides for heterocyclic compounds containing nitrogen hetero-atom(s) only; other compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure: other: other: other drugs. HQ 959693 revoking ruling 952066 is set forth as an attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: March 30, 1998.

MARNIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 30, 1998.

CLA–2 RR:CR:GC 959693 RTR
Category: Classification
Tariff No. 2933.39.41

MELVIN E. LAZAR, ESQ.
BARNES, RICHARDSON & COLBURN
475 Park Avenue South
New York, NY 10016

Re: Loratadine; subheading 2933.90.26; HQ 952066 revoked.

DEAR MR. LAZAR:

This is in reference to HQ 952066, which was issued to you on August 12, 1992, in response to your request of June 15, 1992, on behalf of Schering Corporation, regarding the tariff classification of loratadine under the Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c)(1)), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub L. 103–182, 107 Stat. 2057, 2186 (1993), a notice of proposed revocation of HQ 952066 was published on February 18, 1998, in the CUSTOMS BULLETIN, Volume 32, Number 6. No comments were received in response to this notice.

Facts:

Loratadine, CAS 79794–75–5, bears the chemical name 4-(8-chloro-5, 6-dihydro-11*H*-benzo-[5, 6] cyclohepta [1, 2-*b*] pyridin-11-ylidene)-1-piperidine carboxylic acid ethyl ester.

The merchandise is used as an antihistaminic drug. For purposes of this ruling, the merchandise is described in its bulk form.

Issue:

Whether an organic chemical containing a fused benzene ring, a fused pyridine ring, and an unfused hydrogenated pyridine ring in its chemical structure is classifiable in subheading 2933.39.41, HTSUS (1998), formerly subheading 2933.39.37, HTSUS (1992).

Law and Analysis:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitutes the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The tariff provisions under consideration are as follows:

2933	Heterocyclic compounds with nitrogen hetero-atom(s) only: Compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure:
2933.39	Other: Other: Drugs:
2933.39.41	Other

* * * * * * *

In HQ 952066, dated August 12, 1992, Customs determined that loratadine was classifiable in subheading 2933.90.26, HTSUS, a provision for other heterocyclic compounds with nitrogen hetero-atom(s) only: nucleic acids and their salts: other aromatic or modified aromatic: drugs: antihistamines. (There is no breakout in the 1998 HTSUS identical to former subheading 2933.90.26, HTSUS.). However, upon re-examination, Customs has concluded that loratadine's chemical structure, which includes an unfused hydrogenated pyridine ring, precludes classification in former subheading 2933.90.26, HTSUS. Customs is now of the opinion that loratadine is classifiable in subheading 2933.39.41, HTSUS (formerly subheading 2933.39.37, HTSUS), covering heterocyclic compounds containing nitrogen hetero-atom(s) only: compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure: other: other: drugs: other, because this breakout more specifically describes the subject merchandise.

Holding:

Under the authority of GRI 1, loratadine is classifiable in subheading 2933.39.41, HTSUS, which specifically covers heterocyclic compounds containing nitrogen hetero-atom(s) only: compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure: other: other: drugs: other. The merchandise is dutiable at the rate of 6.8% *ad valorem* (1998).

Effect on Other Rulings:

HQ 952066, dated August 12, 1992, is revoked. In accordance with 19 U.S.C. 1625(C)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

WITHDRAWAL OF PROPOSED REVOCATION OF RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF STENCIL SETS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal of proposed revocation of tariff classification ruling letters

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), on May 14, 1997, Customs published a notice in the CUSTOMS BULLETIN, Volume 31, Number 20, advising interested parties of its proposal to revoke Headquarters Rulings Letters (HRL) 950926, dated March 31, 1992, and HRL 951965, dated September 18, 1992, which both classified the same stencils and pencils sets as toys, in heading 9503, of the Harmonized Tariff Schedule of the United States (HTSUS). Customs proposed to replace HRLs 951965 and 950926 with proposed HRL 959767, which would reclassify the stencils and pencils sets as GRI 3(b) sets that derived their essential character from the stencil. The sets would be classified in heading 9017, HTSUS, which provides for, among other things, stencils specialized as drawing instruments.

After review of the comments and further research, we are of the opinion that the stencil and pencils sets are properly classified in heading 9503, HTSUS, which provides for "[o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof." Therefore, Customs is withdrawing proposed ruling HRL 959767.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, Attorney, General Classification Branch at 202–927–2404.

BACKGROUND

The merchandise at issue is a hanging pink card/blister package labeled "Stencils & Pencils" consisting of (1) a yellow plastic stencil measuring approximately 3-3/8″ by 6-3/8″ inches with small cutouts resembling various farm structures, farm animals, two hearts, a cloud, a crescent moon, a paw print, and a butterfly, (2) four color pencils (yellow, pink, purple, and light blue), each 3-3/8 inches in length, and (3) three small, brightly-colored erasers in the shape of a rabbit, a cow and a heart.

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section and chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining

GRI's may then be applied. The relevant headings and subheadings considered were as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914
9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof
* * * * * * *	
9503.70	Other toys, put up in sets or outfits, and parts and accessories thereof

The term "toy" is not defined in the HTSUS. However, in understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See*, T.D. 89–90, 54 FR 35127, 35128 (August 23, 1989).

The ENs to Chapter 95 state, in pertinent part, that "[t]his Chapter covers toys of all kind whether designed for the amusement of children or adults." Although not set forth as a definition of "toys," we have interpreted the just-quoted passage from the ENs as equating "toys" with articles "designed for the amusement of children or adults," although we believe such design must be corroborated by evidence of the articles' principal use.

When the classification of an article is determined with reference to its principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods *of that class or kind to which the imported goods belong*, and the controlling use is the principal use. In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the U.S. Court of International Trade (CIT) has provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as mer-

chandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979.

The general physical characteristics of the stencils and pencils sets, mainly its bright colors small colored pencils, small colored heart, rabbit and cow shaped erasers and stencils of barnyard animals, hearts , etc., all indicated that the stencils and pencils sets were principally used as toys. Furthermore, the manner of advertisment and display further confirms their use as toys in such phrases like "Collect Them All. Fun, easy to use stencils. Complete with 4 fashion color pencils and 3 outrageous erasers." which appeared on the sets' blister pack. Moreover, the sets were principally used in the same manner as toys; meaning they created a means for children to invent individual figures in the shape of the cutouts or imaginative scenes involving multiple figures.

The ENs for heading 95.03 provide, in pertinent part, that:

> [c]ollections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this Chapter when they are put up in a form clearly indicating their use as toys (e.g., instructional toys such as chemistry, sewing, etc., sets).

With respect to toy sets, the ENs for subheading 9503.70 provide, in pertinent part, that:

> "[s]ets" are two or more different types of articles (principally for amusement), put up in the same packing for retail sale without repacking. Simple accessories or objects of minor importance intended to facilitate the use of the articles may also be included.

It is Customs position that "toys put up in sets or outfits" (subheading 9503.70) is an *eo nomine* provision denoting a clearly identifiable class or kind of goods. Consequently, goods may be classified in subheading 9503.70 pursuant to GRI 1, and recourse to the other GRI's, particularly the provisions of GRI 3 relating to sets, is unnecessary. *See, e.g.*, HRL 086407 of March 22, 1990, HRL 086330 of May 14, 1990, and HRL 950700. Such sets typically contain complementary articles intended for use together, rather than individually, to provide amusement. However, we note that there is no requirement that the components of the set *only* be capable of use *together*. The ability of one or more of a toy set's components to be used individually does not disqualify a potential set from classification as a toy set. It is sufficient that the components of the potential set possess a clear nexus which contemplates a use together to amuse.

Inasmuch as the "Stencils & Pencils" set complied with the above-described conditions for classification as a toy set under subheading 9503.70.00, HTSUS, and inasmuch as an application of the factors mentioned in *United States v. Carborundum Company, supra*, confirm such classification, classification of the articles elsewhere in the HTSUS is precluded. Because the merchandise was correctly classified in HRL's

951965 and 950926, our proposed revocation of those rulings published in the CUSTOMS BULLETIN of May 14, 1997, is withdrawn.

Dated: March 27, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF THERMAL IMAGING SYSTEM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of the IRIS thermal imaging system (IRIS) under the Harmonized Tariff Schedule of the United States (HTSUS).

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 15, 1998.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Attorney-Advisor, Commercial Rulings Division, (202) 927–2337.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 25, 1998, Customs published a notice in the CUSTOMS BULLETIN, Volume 32, Number 8, proposing to revoke NY A83894, issued on June 18, 1996, concerning the tariff classification of the IRIS. No comments were received in response to the notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NY A83894 to reflect the proper classification of the IRIS under subheading 9013.80.90, HTSUS, as an other optical instrument, not specified or included elsewhere in chapter 90, HTSUS. HQ 961289 revoking NY A83894 is set forth as the Attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

Dated: March 30, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, March 30, 1998.

CLA–2 RR:CR:GC 961289
Category: Classification
Tariff No. 9013.80.90

MS. KAREN M. SCHMICKER
CAIRNS & BROTHER INC.
P.O. Box 4076
Clifton, NJ 07012

Re: Reconsideration of NY A83894; IRIS Thermal Imaging System; Section XVI, Note 4; Chapter 90, Note 3; Functional Unit; Explanatory Note 90.27; Chapter 90, Additional U.S. Note 3; Optical Instrument; HQ 089170; 8528.13.00; 9027.50.80.

DEAR MS. SCHMICKER:

This is in response to your letter of November 25, 1997, to the Customs Commodity Specialist Division, New York, requesting reconsideration of NY A83894, issued to a Customs broker on behalf of Cairns & Brother Inc. on June 18, 1996, concerning the classification of the IRIS thermal imaging system under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter was referred to this office for a response.

Pursuant to 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub.L. 103–82, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY A83894 was published on February 25, 1998, in the CUSTOMS BULLETIN, Volume 32, Number 8. No comments were received in response to the notice.

Facts:

The merchandise consists of the IRIS thermal imaging system (IRIS), which is used by fire fighters to see through dense smoke. The system, which attaches to a fire fighter's helmet, is comprised of the following: a focal plane array sensor, processor/power module, and cable. A helmet mounted display and a rechargeable battery are used with the system; however, it is our understanding that neither one is imported with the system.

The IRIS detects infrared radiation (heat) which is emitted directly by objects and materials. It is our understanding that thermal imaging devices, such as the IRIS, enable the user to view objects or materials in total darkness and through obscurants such as heavy smoke. The focal plane array sensor, which incorporates optical elements such as prisms, mirrors, and lenses, contains the infrared sensor which detects any heat energy.

Issue:

Whether the IRIS is classifiable under subheading 8528.13.00, as television reception apparatus, under subheading 9013.80.90, HTSUS, as an other optical instrument, not specified or included elsewhere in chapter 90, HTSUS, or under subheading 9027.50.80,

HTSUS, as an other instrument using optical radiation for measuring or checking quantities of heat.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8528	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors:
	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus:
8528.13.00	Black and white or other monochrome.
* * * * * * *	
9013	Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof:
9013.80	Other devices, appliances and instruments:
9013.80.90	Other.
* * * * * * *	
9027	Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof:
9027.50	Other instruments and apparatus using optical radiations (ultraviolet, visible, infrared):
9027.50.80	Other.
* * * * * * *	

Section XVI, note 4, HTSUS, states that:

> [w]here a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function.

Chapter 90, note 3, HTSUS, states that:

> [t]he provisions of note 4 to section XVI apply also to this chapter.

As the IRIS consists of individual and interconnected components, if those components contribute together to a clearly defined function covered by a provision in chapters 84,85, or 90, HTSUS, the IRIS will constitute a functional unit. We must now determine if such a provision exists.

In NY A83894, dated June 18, 1996, Customs held the IRIS to be classifiable under subheading 8528.13.00, HTSUS. In HQ 950591, dated December 23, 1991, we stated that:

> [s]pecifically, infrared uses frequencies of the order of 10 (13th power) Hz. Therefore, infrared cannot be said to be encompassed by the terms radiotelephony, radiotelegraphy, radiobroadcasting or television, as delineated in heading 8527, HTSUSA.

Based upon the reasoning in HQ 950591, because heading 8528, HTSUS, covers television reception apparatus, the IRIS, which utilizes infrared technology, is precluded from classification under subheading 8528.13.00, HTSUS.

You claim that the IRIS is a thermal analysis instrument which checks or measures quantities of heat, classifiable under subheading 9027.50.80, HTSUS. Based upon the information you have provided, the IRIS is a thermal imaging device which aids the user in seeing objects or materials through heavy smoke. You have not provided any evidence that

the IRIS measures or checks quantities of heat or provides an analysis of thermal energy. Also, the IRIS does not appear similar to any of the many examples given in Harmonized Commodity Description and Coding System Explanatory Note 90.27 (pp. 1637–1643). Therefore, it is our position that the IRIS is not classifiable under subheading 9027.50.80, HTSUS.

Chapter 90, additional U.S. note 3, HTSUS, states that:

> [f]or the purposes of this chapter the terms "*optical appliances*" and "*optical instruments*" refer only to those appliances and instruments which incorporate one or more optical elements, but do not include any appliances or instruments in which the incorporated optical element or elements are solely for viewing a scale or for some other subsidiary purpose.

As previously stated, the IRIS contains optical elements. As it is our understanding that these elements are instrumental in the functioning of the IRIS, it is our position that they serve a primary function, and therefore the IRIS is an optical instrument as defined above.

Because the IRIS does not appear to be classifiable elsewhere in chapter 90, HTSUS, or in other chapters of the HTSUS, we find that its components constitute a functional unit, contributing together to the clearly defined function of an optical instrument covered by heading 9013, HTSUS. Specifically, the IRIS is classifiable under subheading 9013.80.90, HTSUS. *See* HQ 089170, dated January 4, 1993, for another example of merchandise classifiable as a functional unit in heading 9013, HTSUS.

Holding:

The IRIS thermal imaging system is classifiable under subheading 9013.80.90, HTSUS, as an other optical instrument, not specified or included elsewhere in chapter 90, HTSUS.

NY A83894 is revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs regulations [19 CFR 177.10(c)(1)].

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

TARIFF CLASSIFICATION OF DRILLED SOFTWOOD LUMBER

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: On October 27, 1997, Customs published a Federal Register document soliciting comments regarding the commercial uses of wood studs with drilled holes. Based on the comments received, it has been decided to proceed, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), with a notice advising interested parties that Customs proposes to revoke the ruling that was the subject of that solicitation of comments.

FOR FURTHER INFORMATION CONTACT: Josephine Baiamonte, Textile Classification Branch, (202) 927–2394.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 27, 1997, Customs published a Federal Register document (62 FR 55667) soliciting comments regarding the commercial

uses of wood studs with drilled holes. Based on the comments received, it has been decided to proceed, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), with a notice advising interested parties that Customs proposes to revoke the ruling that was the subject of that solicitation of comments. Comments on the proposed action will be entertained during the 30 day period following publication of the notice of proposed action in the CUSTOMS BULLETIN pursuant to section 625(c)(1).

DOUGLAS M. BROWNING,
Acting Commissioner of Customs.

Approved: April 6, 1998.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF DRILLED SOFTWOOD STUDS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of certain drilled softwood studs. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before May 15, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Josephine Baiamonte, Textile Classification Branch, (202) 927–2394.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation

Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of certain drilled softwood studs.

In New York Ruling Letter (NY) B81564, dated February 18, 1997, drilled softwood studs were classified in subheading 4418.90.4040, HTSUSA, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), in the provision for builder's joinery and carpentry of wood. This ruling letter is set forth in "Attachment A".

Since the issuance of NY B81564, Customs' classification of the subject drilled softwood lumber has been called into question. Generally, in addition to issues concerning the correctness of the classification per se, it is further alleged that Customs' decision could result in circumvention of the "1996 Softwood Lumber Agreement between the Government of the United States of America and the Government of Canada" by shifting certain lumber from heading 4407, which is subject to the Agreement, to heading 4418, which is not subject to the Agreement.

At the request of the Office of the United States Trade Representative, the u.S. Customs Service undertook a review of its position on tariff classification of drilled softwood lumber. On October 27, 1997, the agency published a Federal Register document (62 Fed.Reg. 55667) soliciting comments regarding the commercial uses of wood studs with drilled holes.

Since that time, NY B81564 has itself been revisited and Customs now believes that the classification of subject merchandise therein is in error. Accordingly, Customs hereby gives notice that it proposes to revoke NY B81564 ("Attachment A") with Proposed Headquarters Ruling Letter (HQ) 961555 ("Attachment B"). This action, if finalized, would reflect classification of the drilled softwood studs in subheading 4407.10.0015, HTSUSA, which provides for wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm: coniferous: other: not treated: mixtures of spruce, pine and fir ("S-P-F"). Before finalizing this action, consideration will be given to any written comments timely received. Furthermore, if finalized, Customs will review all other rulings concerning articles classified under heading 4418 to determine whether further proposals to revoke said rulings are necessary.

The Federal Register document dated October 27, 1997 (62 Fed.Reg. 55667), seeking comments regarding the commercial uses of wood studs with drilled holes, placed the public on notice that claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of that Federal Register document.

Dated: April 6, 1998.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, February 18, 1997.

CLA–2–44:RR:NC:2:230 B81564
Category: Classification
Tariff No. 4418.90.4040

MR. DAVE WALSER
ARTHUR J. HUMPHREYS DIV.
BORDER BROKERAGE CO., INC.
P.O. Box 249
Sumas, WA 98295

Re: The tariff classification of drilled softwood studs from Canada.

DEAR MR. WALSER:

In your letter dated January 22, 1997, on behalf of your client, North Star Wholesale Lumber, you requested a tariff classification ruling.

The ruling was requested on drilled spruce/pine/fir boards used as studs in framing a house. A sample two foot section of one end of a stud was submitted. It consists of a rectangular piece of solid wood measuring approximately 1½ inches thick and 3¼ inches wide with eased edges and unworked ends. A hole one inch in diameter has been drilled in the center of the board about 16 inches from the end. The purpose of the hole is to allow electrical wiring, cables or pipes to be run through the studs. The studs will be imported in sizes of 2 x 4 and 2 x 6 and in 8 to 10 foot lengths. The imported studs will have a hole drilled at each end.

The applicable tariff provision for the drilled studs will be 4418.90.4040, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other builders' joinery and carpentry of wood; other fabricated structural wood members. The general rate of duty will be 4 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Paul Garretto at 212–466–5779.

GWENN KLEIN KIRSCHNER,
Chief, Special Products Branch,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:TE 961555 jb
Category: Classification
Tariff No. 4407.10.0015

MR. DAVE WALSER
ARTHUR J. HUMPHREYS DIV.
BORDER BROKERAGE CO., INC.
P.O. Box 249
Sumas, WA 98295

Re: Classification of drilled softwood studs; heading 4407.

DEAR MR. WALSER:

On February 18, 1997, our New York office issued to you New York Ruling Letter (NY) B81564, which addressed spruce/pine/fir boards used as studs in framing a house. This letter is to inform you that after careful review of that ruling, it has been determined that the classification of that merchandise in heading 4418, Harmonized Tariff Schedule of the United States (HTSUS) is incorrect. As such, NY B81564 is revoked pursuant to the analysis which follows below.

Facts:

The submitted merchandise consists of drilled softwood studs used in framing applications. The studs measure 2" by 4", and 2" by 6", in lengths of 8 to 10 feet and feature two one-inch diameter holes drilled in the center of each board (about 16 inches from each end). It was indicated that the holes served the purpose of allowing electrical wiring, cables or pipes to be run through the studs during wall construction. As such, the subject merchandise was classified in heading 4418, HTSUS, which provides for, among other things, builder's joinery and carpentry of wood.

Issue:

What is the proper classification for the subject merchandise?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Chapter 44, HTSUS, provides for, among other things, wood and articles of wood. This chapter is structured so that less processed wood appears at the beginning of the chapter followed by more advanced wood in later headings within the same chapter. Thus, for example, heading 4403, HTSUS, is a general provision for wood in the rough, whether or not stripped of bark or sapwood or roughly squared, and heading 4421, HTSUS, is a basket provision for more advanced articles of wood that cannot be classified elsewhere in the chapter.

As heading 4407 resides at the beginning of Chapter 44, HTSUS, it reflects coverage of a relatively basic category of lumber products in relation to heading 4418, which, residing closer to the end of Chapter 44, HTSUS, reflects coverage of a relatively more advanced category of products. Heading 4407, HTSUS, provides for wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm. Customs believes that, while not dispositive, the Explanatory Notes to the Harmonized Commodity Description and Coding System (EN) should always be consulted when resolving a particular classification question. *See*, 54 Fed.Reg. 35127 (August 23, 1989). In this regard, the EN to heading 4407, HTSUS, state in relevant part:

> The products of this heading may be planed (whether or not the angle formed by two adjacent sides is slightly rounded during the planing process), sanded, or end-jointed, e.g. finger-jointed (see the General Explanatory Note to this Chapter).

Heading 4418, provides for, among other things, builder's joinery and carpentry of wood. The EN to heading 4418, HTSUS, state in pertinent part:

> This heading applies to woodwork, including that of wood marquetry or inlaid wood, used in the construction of any kind of building, etc., in the form of assembled goods or

as recognizable unassembled pieces (e.g., prepared with tenons, mortises, dovetails or other similar joints for assembly), whether or not with their metal fittings such as hinges, locks, etc.

The term "**joinery**" applies more particularly to builders' fittings (such as doors, windows, shutters, stairs, door or window frames), whereas the term "**carpentry**" refers to woodwork (such as beams, rafters and roof struts) used for structural purposes or in scaffoldings, arch supports, etc., and includes assembled shuttering for concrete constructional work. * * *

The agency's position is that the subject merchandise, but for the drilling which has created the current controversy, falls within heading 4407, HTSUS. The tariff issue to be resolved, therefore, is whether the drilling should cause these articles to be considered as one of the relatively advanced articles provided for under heading 4418, HTSUS, that is, "builders' joinery and carpentry of wood." Upon further analysis of the competing tariff provisions, we do not believe the minimal addition of drilled holes to these articles is sufficient to change their classification.

At the time NY B81564 was issued, it was generally understood that the drilled studs were to be used for structural purposes, that is, for framing houses, and, consequently, the articles appeared to fall within the language of the EN to heading 4418, HTSUS. However, for the reasons that follow, we believe the conclusion that this understanding causes the articles to fall under heading 4418, HTSUS, was in error. First, this understanding of the structural purpose of these articles exists whether or not the articles are drilled and, as stated above, notwithstanding the undrilled articles are generally understood to be used for the structural purpose of framing houses, they fall under heading 4407, HTSUS. Second, a close reading of the EN to heading 4418, HTSUS, suggests that the first and second paragraphs are to be read in relation to one another. In that respect, the language regarding the term "carpentry" appearing in the EN to heading 4418, should be read in the context of the paragraph immediately preceding it so that heading 4418 applies only to woodwork used for structural purposes which is in the form of assembled goods or as recognizable unassembled pieces. In other words, the article must be in the form of an assembled good or exhibit some feature (e.g., prepared with tenons, mortises, dovetails or other similar joints for assembly) which qualifies it as a recognizable unassembled piece. It follows that, because the subject drilled softwood studs containing a hole which may act as a conduit for wires or pipes are not in the form of assembled goods and do not qualify as a recognizable unassembled piece, the subject articles do not serve a structural purpose within the meaning of the EN to heading 4418, HTSUS, as properly understood.

Accordingly, NY B81564 is revoked to reflect the proper classification of the subject drilled softwood studs in heading 4407, HTSUS.

Holding:

The subject drilled softwood studs are properly classifiable in subheading 4407.10.0015, HTSUS, which provides for wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm: coniferous: other: not treated: mixtures of spruce, pine and fir ("S-P-F"). The applicable rate of general duty is "Free".

JOHN DURANT,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Richard W. Goldberg
Donald C. Pogue
Evan J. Wallach

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Dominick L. DiCarlo

Nicholas Tsoucalas

R. Kenton Musgrave

Clerk

Raymond F. Burghardt

Decisions of the United States Court of International Trade

(Slip Op. 98–29)

UNITED STATES, PLAINTIFF *v.* EVEREADY BATTERY CO., INC., DEFENDANT

EVEREADY BATTERY CO., INC., THIRD-PARTY PLAINTIFF *v.* DANIEL F. YOUNG, INC., SOUTHERN OVERSEAS CORP., C.J. TOWER, INC., JOHN S. CONNER, INC., AND CARMICHAEL INT'L, SERVICE, THIRD-PARTY DEFENDANTS

Court No. 96–08–01995

(Dated March 18, 1998)

Frank W. Hunger, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Lisa B. Donis)* for plaintiff.

Bayh, Connaughton & Stewart (Gary L. Bohlke) for defendant.

Hyman & Kaplan (Andrew D. Kaplan) for third-party defendant John S. Connor, Inc. and Carmichael International Service.

Sandler, Travis & Rosenberg, P.A. (Kenneth N. Wolf) for third-party defendant C.J. Tower, Inc.

Brauner, Baron, Rosenzweig & Klein (Mel P. Barkin) for third-party defendant Daniel F. Young.

Grunfeld, Desiderio, Lebowitz & Silverman (David M. Murphy) for third-party defendant Wilmington Shipping Co.

MEMORANDUM OPINION AND ORDER

RESTANI, *Judge:* This matter is before the court on defendant Eveready Battery Company's motion to compel compliance with settlement and motion to seal documents in accordance with the settlement. The court declines to act on such motions as it lacks jurisdiction following dismissal of the action under Court of International Trade Rule 41(a)(1). "Enforcement of a settlement agreement * * * is more than just a continuation or renewal of the dismissed suit, and hence requires its own basis for jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of America,* 511 U.S. 375, 378 (1994). The court, of course, may incorporate the terms of the settlement into an order of dismissal or expressly retain jurisdiction over the settlement and, thus, continue its jurisdiction. *Id.* at 381–2. The form of dismissal used here provided no opportunity for such action.

The court notes that although plaintiff indicated it was noticing dismissal pursuant to Rule 41(a)(1)(B) (dismissal by stipulation), it utilized forms appropriate to Rule 41(a)(1)(A) (notice of dismissal prior to answer or motion for summary judgment). None of the parties, however, objected to the form of the dismissal.

Accordingly, the court lacks jurisdiction to resolve the contractual dispute. In order to maintain the status quo pending resolution of the dispute the court orders the motion to compel to be placed under seal and withheld from the public docket. The court does not hereby decide whether the contract requires such confidentiality and does not make any order affecting the further conduct of the parties with regard to confidentiality.

NOTE: This is to advise that Slip Op. 98–30 is not available for publication at this time due to the confidential nature of the document. A public version of the document will be released and published in the CUSTOMS BULLETIN when available.

(Slip Op. 98–30)

VERSON, A DIVISION OF ALLIED PRODUCTS CORP., UNITED AUTOWORKERS AND UNITED STEEL WORKERS OF AMERICA (AFL-CIO/CLC) PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND AIDA ENGINEERING, LTD., MITSUI & CO. (U.S.A.), INC. AND KURIMOTO, LTD., DEFENDANT-INTERVENORS

Court No. 96–11–02543

(Dated March 23, 1998)

(Slip Op. 98–31)

EM INDUSTRIES, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 94–08–00478

[Judgment for plaintiff.]

(Decided March 24, 1998)

Simons & Wiskin (Philip Yale Simons and *Jerry P. Wiskin,* Esqs.), for plaintiff.
Frank W. Hunger, Assistant Attorney General, *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, and *Barbara M. Epstein,* Esq., Commercial Litigation Branch, Civil Division, United States Department of Justice; and *Edward Maurer,* Esq., Office of Assistant Chief Counsel, International Trade Litigation, United States Customs Service, of counsel, for defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

NEWMAN, *Senior Judge:* This action concerns the proper tariff classification, and hence rate of duty, under the Harmonized Tariff Schedule of the United States ("HTSUS") for "pearlescent pigments" imported by E.M. Industries, Inc., plaintiff in this action, from Germany in 1992–93. Two types of pearlescent pigments are involved: mica coated with titanium dioxide and mica coated with iron oxide.[1]

The mica-based pigment coated with titanium dioxide was classified by the Customs Service ("Customs") under subheading 3206.10.00 HTSUS, as "pigments or preparations based on titanium dioxide." The mica-based pigment coated with iron oxide was classified under subheading 3206.49.20, HTSUS, as "other coloring matter and other preparations * * * other * * * preparations based on iron oxide."

There is no dispute between the parties that the pearlescent pigments are properly classifiable under HTSUS Heading 3206. Plaintiff, however, claims that the merchandise is outside the scope of the specific subheadings of Heading 3206 under which they were classified by Customs and that all of the pearlescent pigments are properly dutiable under the residual or "basket" subheading 3206.49.50, HTSUS, as "Other," (under "other coloring matter and other preparations").

The court has jurisdiction pursuant to 28 U.S.C. § 1581(a). At a bench trial, three witnesses testified for plaintiff and one witness testified on behalf of defendant. The record also includes numerous exhibits. After careful review of the testimony of record, exhibits, and briefs of counsel, the court concludes that Customs' classifications are incorrect and that plaintiff's claim should be sustained.

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[1] In some pearlescent pigments covered by this action, titanium dioxide is the only metal oxide, while in other pearlescent pigments, iron oxide is the only metal oxide. However, in two out of the approximately 26 different pearlescent pigments at issue, both titanium dioxide and iron oxide layers are present, with the outer layer being titanium dioxide or iron oxide depending upon the desired color. For purposes of discussion, however, references will be made only to pearlescent pigments with either a layer of titanium dioxide or of iron oxide.

FINDINGS OF FACT

1. The subject merchandise, pearlescent or synthetic nacreous pigments, consist of platelets having a micaceous substrate coated with a thin film or layer of either titanium dioxide or iron oxide.

2. The platelets are transparent, consist of alternating layers of materials with a high and low refractive index, and in addition to exhibiting color, simulate the nacreous luster of natural pearls.

3. "The characteristics of nacreous pigments are inherent in the physical properties of the pigment particles." Pltf's Exh. C attached to Reply Mem., at p. 829. For instance, the interference color effect of pearlescent pigments arises from a physical structure of uniform, thin layers of the pearlescent pigment particle's constituents rather than from discrete metal oxide pigment particles.

4. Such physical properties of pearlescent pigments as platelet transparency or opacity, length, diameter, platy shape, thickness, smooth surfaces, high refractive index, are all non-chemical or physical properties that bear on the unique visual characteristics of pearlescent pigments. "The effects which are produced by pearlescent pigments are intimately connected to optics and the interaction of light with matter." *See* Pltf's Exh. D, p. 1.

5. As a result of reflection and refraction of light, synthetic nacreous pigments possess a pearl-like luster ("pearlescence"), and also, depending upon the thickness of the metal oxide layer, they can also exhibit interference color effects. Pltf's Reply Mem., Exh. A. A unique characteristic of pearlescent pigments is that their color effects are angle-dependent (depend on the viewing angle).

6. Unlike pigment grade or "pigmentary" titanium dioxide and iron oxide, the physical properties of pearlescent pigment particles are based on the platy shape of the mica substrate. These mica substrates result from grinding natural mica into small platelets. Mica, the particles of which have the desired platiness but inadequate refractive index, contributes its geometric shape to the metal oxide layer which has the requisite refractive index but does not spontaneously occur in the requisite platelike form. To produce the optical effect of imitating pearls, *i.e.*, producing a pearly luster, pearlescent pigments must have platy-shaped pigment particles.

7. Layers of titanium dioxide and iron oxide are not directly deposited on the mica substrates, but rather the metal oxide layers result from chemical reactions of certain precursor or intermediate chemical compounds.[2]

8. To produce colors by "constructive interference" (an optical property of pearlescent pigments), it is necessary for the mica substrate and

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[2] During manufacture of the pearlescent pigments, certain titanium and iron containing precursor compounds (usually titanium tetrachloride, titanyl sulfate, and ferric chloride) undergo chemical reactions ultimately resulting in the synthesis of titanium dioxide and iron oxide which form the thin film coatings on the mica substrate. In that regard, deft's Exh. E discloses: "Mica generally is coated by adding a solution of one or more metal salts (e.g. $TiOSO_4$ $FeCl_3$ to an aqueous mica suspension. The reaction conditions (concentration, temperature, etc.) are controlled in a way that results in the hydrolysis of the metal salt to an insoluble metal oxide, or hydroxide, deposited on the mica platelets."

the metal oxide coating materials to have different indices of refraction in order to create "boundaries" from which light can be reflected. The "boundaries" essential to interference colors produced by substances with different indices of refraction require both the low refractive index substrate and a high refractive index coating material.[3] As previously noted, the mica substrate also provides the proper geometric shape to the pigment platelet (including the shape of the metal oxide coatings) and provides the platelets with the necessary mechanical strength essential to the pearlescent pigment's commercial use.[4] In pearlescent pigments both the thin film metal oxide layer and mica substrate are essential constituents to the unique optical properties of pearlescent pigments.

9. Pearlescent pigments are known as "effect" pigments because they have the unique optical property of pearlescence as well as color. The pearl effect requires the platy shape of the pearlescent pigment particle, which in turn requires the platy-shaped mica substrate. Both pearlescence and constructive interference involve an extremely close physical and functional interface, and unitary, integral and interdependent relationship of the mica substrate and coating material in the pigment particles.

10. The pearlescent pigment's luster or pearlescence, results from different optical phenomena than those involved in the production of color. Pearl luster is produced by reflection of light from the top surface of the pearlescent pigment particles which are oriented in a layered arrangement, whereas the colors produced by a pearlescent pigment (interference colors) result from the constructive interference of light from reflection at internal boundaries within each pearlescent pigment particle (which result from the disparity between indices of refraction of the mica substrate and the coating material).

11. Interference colors may be controlled by varying the geometric thickness of the metal oxide film *(i.e.,* the controlled thickness of the coating materials on the substrate). Thus, if the layers of titanium dioxide or iron oxide are very thin, a white pearl reflection color is produced; increasing the layer thickness gives gold, red, blue and green reflection colors in order of increasing layer thickness.

12. The phenomena underlying the properties of pearlescence and constructive interference of light are not present in the traditional pigmentary forms of the named metal oxides. Moreover, a unique optical property of pearlescent pigments is their ability to show multiple color effects: they can show two different colors when viewed at two different angles. Pltf's Exh. 8.

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[3] The boundaries between the metal oxide, which has a high refractive index, and the mica, which has a lower refractive index, causes light to be reflected from the boundary and to constructively interfere to produce color. If the mica and the metal oxide did not have different indices of refraction, there would be no boundaries, no interference with light, and hence no interference color would be produced.

[4] As pointed out in Deft's Exh. E, p.6: "Pearlescent pigments, as compared to other colorants, are mechanically sensitive. The pigment platelets might break or the metal oxide layer on the mica might be removed if they are handled improperly."

13. Physically *(i.e.*, particle size, shape, structure) and functionally titanium dioxide and iron oxide are altogether different in the pigmentary forms of the metal oxides and in the thin film layers of mica-based pearlescent pigments. Pigmentary titanium dioxide, for example, is a white, opaque, discrete, spherical particle capable of scattering light that strikes the pigment particle to produce a white color; the titanium dioxide coating over the mica substrate of a pearlescent pigment is a thin transparent film which reflects or transmits light. Iron oxide in pigmentary form is red, opaque, absorbs certain wavelengths of light and reflects others, and otherwise physically and functionally differs from the thin film of iron oxide coated on mica in a pearlescent pigment.[5] The pigmentary forms of the metal oxides produce color by absorption while pearlescent pigments produce color by constructive interference.

14. Unlike pigmentary titanium dioxide which only produces the color white, pearlescent pigments comprised of titanium dioxide coated on mica produce colors which range from silver to every color in the rainbow. Unlike pigmentary ferric oxide, which only produces the color red, pearlescent pigments comprised of iron oxide coated on mica produce colors which range from shades of brown to various shades of red. In sum, from the aspects of both pearlescence and the way color is achieved, pearlescent pigments are physically and functionally a different category of pigments than the absorption pigments, the category to which most pigments belong. *See* figure 1, Deft's Exh. E, p. 1.

15. "The visual appearance of a transparent pigment material consists of light components that have travelled different distances * * *, thereby giving the material an impression of depth *that cannot be achieved by other methods." Id.* (Emphasis added.)

16. In the pigment industry, pearlescent pigments comprised of mica coated with a metal oxide are sometimes referred to as mica-based pigments, *Id.* at 6, or as pigments based on iron oxide coated mica, Pltf's Exh. 8, or as mica-containing pearlescent pigments based on titanium dioxide. Deft's Exh. E, p. 3.

17. Chemically, the metal oxide films coating the mica in the pearlescent pigments are identical to "pigmentary" titanium dioxide (TiO_2) and iron oxide (FeO_3), but that chemical identity of the metal oxides is where any similarity of pearlescent pigments to the pigmentary forms of metal oxides ends. Because of their special optical or functional properties, metal oxide coated mica pearlescent pigments are regarded by the pigment industry as a separate category of inorganic pigments different from conventional light absorbing pigments, the most common category of pigments. Deft's Exh. E, p. 1. Defendant readily concedes that in the pigments industry, the mention of "titanium dioxide" generally con-

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[5] Deft's Exh. E, p.2, points up the functional and structural distinctions: "Contrary to absorption pigments (e.g. iron oxides, titanium dioxide, organic pigments), the color of an interference *(i.e.*, pearlescent) pigment is not caused by diffuse scattering of unabsorbed portions of light, but by directed light reflection of specific wavelengths. Consequently, visible color and brightness are different at different observation angles [the color of absorption pigments is angle-independent, while colors of pearlescent pigments change when the colors are observed under different angles]." Structurally, "[t]he particle size of pearlescent pigments is distinctively larger than that of absorption pigments."

notes the traditional "absorption" type pigment—pigmentary (or pigment grade) titanium dioxide—not mica-based synthetic nacreous or pearlescent pigments with a thin film layer of the metal oxide that effects colors *and* pearlescence by completely different phenomena. Deft's Pretrial Mem. at 28–30.

18. Since without the mica substrate, pure TiO_2 cannot be produced economically in a platy shape, deft's exh. E, p.3, the mica substrate is an integral and essential constituent of pearlescent pigments. Although commercially impracticable, a patented technology exists to dissolve away the mica substrate after formation of the pigment particle, leaving an "unsupported" pearlescent pigment composed of the metal oxide material.[6]

PARTIES' CONTENTIONS

Plaintiff:

(1) Pearlescent pigments are not classifiable within subheadings 3206.10.00 and 3206.49.20 and fall within the residual provision subheading 3206.49.50 because they are physically and functionally of a different class of coloring matter than that covered by those subheadings. Specifically, the "pigments based on titanium dioxide" covered by subheading 3206.10.00 are "pigmentary" (pigment grade) titanium dioxide, which is used to produce a white color; "preparations based on iron oxide" of subheading 3206.49.20 are "pigmentary" (pigment grade) iron oxide.

(2) Defendant improperly invokes the HTSUS general rules of interpretation ("GRI") 1 and 2(b) to expand the scope of subheadings 3206.10.00 and 3206.49.20 to include pearlescent pigments, which were not intended to be covered by those subheadings.

(3) In determining the legislative intent as to the scope of subheadings 3206.10.00 and 3206.49.20, the court should, as it has repeatedly done in the past, look for guidance in The *Harmonized Commodity Description and Coding System General Explanatory Notes ("Explanatory Notes")*, published by the World Customs Organization (established in 1952 as the Customs Co-operation Council), Heading 32.06. That pearlescent pigments were intended to be classified separately from the pigmentary forms of metal oxides under Heading 3206, HTSUS, is plainly evident from their listing in Heading 32.06 of the *Explanatory Notes* separate from pigments based on metal oxides.

(4) Following the rationale of *Siemens America, Inc. v. United States*, 84 Cust. Ct. 180, C.D. 4856, 496 F. Supp. 266 (1980), *rev'd on other*

[6] Defendant adduced at trial testimony of an expert witness, Dr. Sullivan, and the "Armanini" patent (Deft's Exh. F) in order to demonstrate the possibility of dissolving away the mica substrate after the creation of a pearlescent pigment particle, thus leaving solely an "unsupported" metal oxide coating as a "pearlescent pigment" that provides both color and luster. According to Dr. Sullivan, in the unsupported pearlescent pigment the platy shape of the metal oxide remains after the mica substrate is removed and the requisite contrasting low index of refraction required for production of color by constructive interference is provided merely by air. This line of evidence demonstrates that while the metal oxide constituent provides the high refractive index material essential to the functions of a pearlescent pigment, the pigment particle's essential platy shape is due solely, at least initially, to the mica substrate, and that even after formation of the pigment particle, mica (or some other appropriate index of refraction substrate) remains essential to the pearlescent pigment's optical properties. Finally, defendant concedes, that Armanini patented methodology for dissolving away the mica substrate after formation of the platelet has no commercial application whatever.

grounds, 68 CCPA 62, C.A.D. 1266, 653 F.2d 471 (1981), *cert. denied*, 454 U.S. 1150 (1982), the "based on" language of the statute must be applied to the *sine qua non* of the pearlescent pigments—both the metal oxide coating and the mica substrate—and not simply the metal oxide coating.

(5) Pearlescent pigments cannot be "based on" titanium dioxide or iron oxide as neither compound independently preexists as a constituent material during the manufacture of the pearlescent pigments; moreover, pearlescent pigments cannot be "based on" the named metal oxides since they do not standing alone impart the "essential character" to pearlescent pigments.

(6) An analysis of the *Explanatory Notes* to Chapter 32 demonstrates that the term "preparation" as used in the chapter and in subheading 3206.49.20 refers to products prepared by mixing coloring matter with binders or solvents, or to a dispersion of coloring matter in a binder—not to iron oxide coated mica.

Defendant:

(1) Subheadings 3206.10.00 and 3206.49.20 embrace all forms of pigments and/or preparations based on titanium dioxide or iron oxide, regardless of the physical form of the metal oxides or the functional or optical characteristics of the pigments.

(2) GRI 1 and 2(b) support Customs' classifications of the merchandise.

(3) The separate listing of pearlescent pigments under the coloring matters covered by the *Explanatory Notes* under Heading 32.06, relied on by plaintiff, does not suggest that they should be similarly separately classifiable from the pigmentary forms of the metal oxides under subheadings 3206.10.00 and 3206.49.20. Unlike the separate listing of pearlescent pigments under Heading 32.06 of the *Explanatory Notes*, Congress provided no separate subheading for such pigments under Heading 3206, HTSUS. Therefore, notwithstanding their separate listing in the *Explanatory Notes*, Congress must have intended that pearlescent pigments be classified together with the pigmentary forms of titanium dioxide or iron oxide classifiable under subheadings 3206.10.00 or 3206.49.20, not under the residual provision of the Heading.

(4) Under the *Siemens* rationale, the pearlescent pigments are "based on" the named metal oxides since they are fundamental and essential components of the pearlescent pigments. Whether or not the mica substrate is also essential is legally immaterial; in any event, the mica substrate is not an essential component of pearlescent pigments.

(5) The pearlescent pigments are "preparations" as that term is defined in *United States v. Hanrahan, Inc., Trans., Wm. Bernstein Co., Inc.*, 45 CCPA 120, C.A.D. 684 (1958).

(6) Neither the "preexisting material" nor "essential character" lines of cases relied on by plaintiff apply to the statutory language "based on."

CONCLUSIONS OF LAW

1. The *Explanatory Notes* although not binding on the court, have repeatedly been recognized by this and our appellate court, and indeed, Customs,[7] as instructive in clarifying the legislative intent regarding the scope of certain provisions of the HTSUS. *See e.g., Midwest of Cannon Falls Inc. v. United States*, 122 F.3d 1423, 1428 (Fed. Cir. 1997); *Marubeni Am. Corp. v. United States*, 35 F. 3d 530, 535 n. 3 (Fed. Cir. 1994); *Mita Copystar America v United States*, 21 Fed. 3d 1079, 1082 (1994); *Lynteq, Inc. v. United States*, 976 F.2d 693, 696 (Fed. Cir. 1992); *Sabritas, S.A. de C.V and Frito-Lay, Inc. v United States*, Slip Op. 98–14 (February 20, 1998); *H.I.M./Fathom, Inc. v. United States*, Slip Op. 97–96 (July 14, 1997); *Bausch & Lomb, Inc. v. United States*, 957 F. Supp. 281, 288 (CIT 1997), *appeal docketed*, No. 97–1333; *Marcor Development Corp. v. United States*, 926 F. Supp. 1124, 1133 (CIT 1996); *Pima Western, Inc. v. United States*, 915 F. Supp. 399 (CIT 1996). *But see Winter-Wolff, Inc. v. United States*, Slip Op. 98–15 (February 20, 1998) (where *Explanatory Notes* did not specifically include or exclude a particular item from a tariff heading, court derived no guidance from the Notes). As discussed below, pearlescent pigments are expressly separately listed under the coloring matters included in Heading 32.06 of the *Explanatory Notes*, from pigments based on various metal oxides, including titanium dioxide.

2. In the recent decision of this court, *Baxter Healthcare Corp. of Puerto Rico v. United States*, Slip Op. 98–16, p. 14 n. 4 (February 24, 1998), wherein defendant relied on the *Explanatory Notes*, Chief Judge Carman explained:

> The *Explanatory Notes* constitute the World Customs Organization's official interpretation of the HTSUS. While not legally binding on the parties, the Notes provide a commentary on the scope of each heading and interpretative rule of the HTSUS and are useful in ascertaining the classification of merchandise under the HTSUS. *See Lonza, Inc. v. United States*, 46 F.3d 1098, 1109 (Fed. Cir. 1995) ("While the *Explanatory Notes* do not constitute controlling legislative history, they do offer guidance in interpreting HTS[US] subheadings."); *see also Rollerblade, Inc.*, 112 F. 3d at 486 n. 3 (although the *Explanatory Notes* are not controlling legislative history, "they are nonetheless intended to clarify the scope of HTSUS subheadings and to offer guidance in interpreting its subheadings"). The Customs Service itself asserted that the *Explanatory Notes* "should be consulted for guidance." HQ 954822 (December 22, 1994).

3. While construing a statute so as to carry out the legislative intent requires that the court first look to the statutory language itself, *Siemens*, 68 CCPA at 68, that does not mean, however, the court is fore-

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[7] *See* 26 Cust. Bull. 446, C.S.D. 92–17 (1992) (Customs relied on Explanatory Notes for scope of HTSUS provisions and for the classification of a food product prepared by the removal of butter fat under subheading 1901.90.3030, HTSUS, as an article of milk or cream, not specially provided for, rather than under 2106, HTSUS, for preparations based on butter or other fats).

closed from also considering readily available guidance from the *Explanatory Notes* as to the intended scope of subheadings. "When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function * * *." *United States v. American Trucking Associations, Inc.*, 310 U.S. 534, 543 (1940).

4. The fundamental rule in customs jurisprudence that an *eo nomine* statutory designation without limitations includes all forms of the described article is subject to a qualification that there is no showing of a contrary legislative intent. *Nootka Packing Co. v. United States*, 22 CCPA 464, T.D. 47464 (1935); *Hasbro Indus., Inc. v. United States*, 879 F.2d 838, 840 (1989). Moreover, even where merchandise falls within the literal language of the statute, such literal interpretation should be rejected if it produces a result contrary to the apparent legislative intent. *Proctor & Gamble Manufacturing Co. v. United States*, 19 CCPA 415, T.D. 45578 (1932), *cert. denied*, 287 U.S. 629 (1932); *Schmidt, Pritchard & Co., Inc. v. United States*, 77 Cust. Ct. 1, C.D. 4666 (1976). A seemingly broad descriptive tariff term is not to be taken as encompassing every article which may literally come within that term, but rather only those articles of the type intended by Congress. *United States v. General Electric Co.*, 58 CCPA 152, 156, C.A.D. 1021 (1971); *United States v. Andrew Fisher Cycle Co.*, 57 CCPA 102, C.A.D. 986 (1970).

5. The *Explanatory Notes*, Heading 32.06, explicitly identify what coloring matter is included within the scope of "pigments based on titanium dioxide," which language exactly mirrors that used in subheading 3206.10.00, HTSUS, and significantly the scope of such language in Heading 32.06 does not include pearlescent pigments. Rather, under Heading 32.06 "synthetic nacreous (pearl) pigments" (including mica coated with titanium dioxide or titanium dioxide and ferric oxide), are listed separately under No. (13) (b).

6. Moreover, the organizational format of Heading 32.06 listing pigments and/or preparations based on specific compounds (including pigments based on titanium dioxide) closely parallels the HTSUS Heading 3206 organizational breakout of subheadings covering pigments based on specific compounds, including titanium dioxide.

7. The court finds the *Explanatory Notes* very persuasive guidance as to the intended classification of pearlescent pigments *vis-a-vis* the scope of subheadings 3206.10.00, 3206.49.20. Unquestionably, under Heading 32.06 of the *Explanatory Notes* mica-coated pearlescent pigments (including those containing titanium dioxide) were differentiated from "pigments based on titanium dioxide" by listing them separately, and therefore, by extension would also be differentiated from preparations based on iron oxide. ostensibly, then, pearlescent pigments were not recognized as falling in the same category as "pigments based on titanium

dioxide," but rather as warranting separate treatment under Heading 32.06.

8. Given the exclusion of nacreous pigments from "pigments based on titanium dioxide" (item No. 1) in Heading 32.06 of the *Explanatory Notes* and their separate treatment under Heading 32.06 (item No. 13),[8] the court agrees with plaintiff that Congress did not intend synthetic nacreous pigments be classified under either subheading 3206.10.00 or 3206.49.20. *Cf. Midwest of Cannon Falls, Inc., supra.* ("The government's argument that the terms 'Christmas tree ornament' and 'Christmas ornament' are interchangeable is further undercut by the fact that 'Christmas candles' and 'Christmas *tree* candles' are referred to separately in the *Explanatory Notes* to heading 9505. *See Explanatory Notes* 95.05(B)(b)" (emphasis in original); *see also, H.I.M./Fathom, Inc., supra* ("[T]he *Explanatory Notes* are persuasive authority for the Court when they specifically include or exclude an item from a tariff heading." The court concludes that Congress intended that the nacreous pigments separately described in item No. 13 of Heading 32.06 of the *Explanatory Notes* (whether a mica-based pearlescent pigment is coated with titanium dioxide or iron oxide) would be classified under the residual provision, subheading 3206.49.50, HTSUS.

9. "Basket" or residual provisions of HTSUS Headings, such as subheading 3206.49.50, are intended as a broad catch-all to encompass the classification of articles for which there is no more specifically applicable subheading.

10. *Siemens* addressed the scope of item 709.66, TSUS, covering "Apparatus based on the use of radiation from radioactive substances" holding that a radioactive substance must be the *sine quo non* or a fundamental and essential constituent of the article. 84 Cust. Ct. at 185, 496 F. Supp. at 269. This holding was affirmed on appeal. *United States v. Siemens America, Inc.*, 68 CCPA 62, 68, C.A.D. 1266 (1981). *See* also *Amersham, supra* (the court followed *Siemens* in finding that a radioactive substance was "crucial, essential, and indispensable to the proper functioning" of an ionizing smoke detector, and therefore, the smoke detector was an apparatus based on the use of radiations from radioactive substances under item 709.66, TSUS).

11. Notwithstanding that the "based on" language of item 709.66, TSUS, construed in *Siemens* is also used in the relevant subheadings of Heading 3206, HTSUS, *Siemens*' interpretation of item 706.66, TSUS, while instructive,[9] is plainly not dispositive of the classification of the

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[8] Plaintiff also stresses, pretrial brief, at 30 n. 48, that the *Explanatory Notes*' treatment of pearlescent pigments separate and apart from pigments based on titanium dioxide or preparations based on iron oxide, parallels the separate treatment of those products in industry literature. *See Pigments Handbook* (1988) and *Ullmann's Encyclopedia of Industrial Chemistry*, Fifth, Completely Revised Ed., 1991 (Pltf's Collective Exh. E to pltf's pretrial brief).

[9] The Tariff Schedules of the United States were adopted pursuant to the Tariff Classification Act of 1962, Pub. L. 87–456, May 24, 1962, 76 Stat. 72, as amended, and became effective on and after August 31, 1963, Proc. No. 3548 of August 21, 1963, 28 F.R. 9279. The HTSUS which replaced the TSUS was enacted on August 23, 1988, pursuant to the Omnibus Trade and Competitiveness Act of 988, P.L. 100–418, 102 Stat. 1148 (codified at 19 U.S.C. § 1202 (1988) and became effective on January 1, 1989. *See* The Conference Report of the Omnibus Trade Act of 1988, H. Conf. R. No. 576, at 549–50 (decisions interpreting TSUS nomenclature are not deemed dispositive in interpreting the HTS, but may be considered instructive on a case-by-case basis in interpreting the HTS); *Beloit Corp. v. United States*, 843 F. Supp. 1489, 1495 *et seq.* (1995); *Glass Products, Inc. v. United States*, 10 CIT 253 (1986).

totally dissimilar and unrelated subject matter covered by the subheadings at issue, particularly in light of the *Explanatory Notes* under Heading 32.06. As the interpretation of item 709.66, TSUS, was not aided by an explanatory note in the Tariff Classification Study or other legislative history, *Siemens* quite properly relies solely on the common meaning of the statutory language to glean the legislative intent. By contrast, as to the scope of the relevant subheadings in the HTSUS, the court has sought guidance from the *Explanatory Notes* to Heading 32.06, as discussed above. *See and compare Libby Glass Div. of Owen-Illinois Inc. v. United States*, 921 F. 2d 1263 (Fed. Cir. 1990).

12. While the classification of goods under the HTSUS is governed by the principles embodied in the GRI, and accordingly, classification is determined according to the terms of the headings and notes, *Pima Western, Inc., supra*, the court must still construe the terms and scope of the headings utilizing the usual guides to statutory construction, and in determining the scope of the subheadings the court may examine relevant *Explanatory Notes*. *See Pima Western, Inc., supra*, 915 F. Supp. at 402; 26 Cust. Bull. 446, C.S.D. 92–17 (1992) (Customs cited the GRIs, but relied on the *Explanatory Notes* to HTSUS for determining the scope of the headings). Fundamentally, GRI 1 and 2(b) cannot be used simply to "bootstrap" the classification of merchandise into subheadings that were not intended to fall within their purview. *See* Interpretative Rules as set forth in *Explanatory Notes* at GRI 1(V) and GRI 2 (XII); *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), *aff'd* ____ F.3d ____, Appeal No. 96–1322 (Fed. Cir. July 16, 1997).

13. In view of the aforementioned legal conclusions, the court need not reach plaintiff's contentions respecting the applicability of the pre-existing material doctrine"[10] or the "essential character" line of cases applying the term "almost wholly of" as used in General Headnote 9(f)(iii), TSUS, or reach plaintiff's argument that the *Hanrahan* definition of a "preparation" would be out of the context in which that term is used in Heading 3206.

CONCLUSION

There is no dispute that in their condition as imported the pearlescent pigments at issue contained the chemical compounds titanium dioxide or iron oxide, and there is no dispute that those compounds are fundamental and essential constituents of the mica-based pearlescent pigments. Whatever the apparent plausibility of defendant's insistence that *a fortiori* under the rationale of *Siemens* such pearlescent pigments are classifiable as "based on" titanium dioxide or iron oxide, the court is nonetheless persuaded by the evidence adduced at trial and the *Explan-*

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[10] Such statutory language as "made of," "manufactured of" or "composed of" used in connection with named materials have been held to imply that the named material of which the finished end product is "made of" or "manufactured of" had a prior, separate, and independent existence before being made into the completed article, *see e.g., United States v. Accurate Millinery Co.*, 42 CCPA 229, C.A.D. 599 (1955); and *Cohn & Lewis v. United States*, 25 CCPA 220, T.D. 49335 (1937). *Cf. Anhydrides & Chemicals, Inc. v. United States*, 130 F.3d 1481 (Fed. Cir. 1997). Similarly, by extension plaintiff contends that the statutory language "based on" with reference to named materials also connotes the independent preexistence of the named materials.

atory Notes that pearlescent pigments should be recognized as separate class of coloring materials from those intended to be classified under subheadings 3206.10.00 and 3206.49.20. As the separate and discrete treatment of pearlescent pigments found under Heading 32.06 of the *Explanatory Notes* did not carry over into Heading 3206 as a specific subheading covering synthetic nacreous pigments, the court concludes that they are properly dutiable under the residual provision for coloring matters, subheading 3206.49.50, as claimed by plaintiff.

Accordingly, based on the foregoing findings of fact and conclusions of law judgment is entered for plaintiff.

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